



NORTHERN TERRITORY

CONSUMER

AFFAIRS

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REGULATORY PRACTICE FRAMEWORK

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Introduction

Northern Territory Consumer Affairs (NTCA) is an independent office in the Northern Territory Department of the Attorney-General and Justice (AGD). We are responsible for regulation and administration of consumer protection legislation in the Territory.

With offices in Darwin and Alice Springs, we endeavour to provide our services across the Northern Territory of Australia despite some geographical challenges.

Although the Territory is the third largest Australian jurisdiction by size, its population is just 233 000. Two out of 5 people live outside the Greater Darwin region, and often in the more remote regions.

The low population density of the Territory means that vast distances span between population centres, which creates some challenges in making our services accessible in remote areas. It also means that NTCA relies to some extent on members of the community to report any trader misconduct and supply sufficient evidence to enable NTCA to take appropriate action.

The advantage of being a small office is that communication is efficient and timely. Trends reported to our Fair Trading team can quickly be referred for compliance action, and necessary internal approvals can be obtained on short notice. This allows for flexibility to adjust priorities, and therefore NTCA is able to respond swiftly to emerging consumer protection issues affecting Territorians. Interstate regulators on the other hand are often better positioned and resourced to address matters of national interest on a broader scale.

This document explains how NTCA intends to contribute to AGD's vision and purpose, and outlines how we deliver our regulatory functions.

Vision and purpose

As outlined in the Strategic Plan 2021-2025, AGD's vision is to provide:

"A safe, fair and just Territory for all"

NTCA contributes to AGD's purpose to support and empower the most vulnerable Territorians, and promote and protect the rights and interests of Territorians by undertaking the following activities:

- Inform and educate the community on their rights and responsibilities as consumers, businesses, tenants and landlords
- Promote responsible business conduct under relevant Territory and Commonwealth legislation
- Conduct compliance and enforcement activities to deter, detect and respond to non-compliance of legislation administered
- Conciliate consumer complaints and disputes
- Participate in advisory and regulatory committees to develop consumer protection laws
- Administer the MyFuel NT fuel price reporting scheme.

AGD's principles form the basis of how we operate. They inform our internal policies and procedures, and are demonstrated through the actions of our staff and the decisions we make.

We are responsive to the diversity of the community

We embrace innovative and creative ways of working

We operate with integrity across all our diverse functions

We collaborate across the department and with our external partners

We respect the independence of the courts and the statutory office holders we support

How we regulate

NTCA is overseen by the Commissioner of Consumer Affairs, which is a statutory office established under the *Consumer Affairs and Fair Trading Act 1990 (NT)* (CAFTA). The Commissioner has various functions outlined in the CAFTA relating to the promotion and protection of consumer interests, including administering the Australian Consumer Law (NT) and various other legislation and statutory offices outlined in Schedule 1.

The Australian Consumer Law (ACL) is a uniform law which applies nationally and has been adopted for the suites of legislation administered by consumer protection regulators across Australia. The ACL is administered and enforced under a multi-regulator model, and NTCA exercises this task in the Territory.

With these foundations in place, NTCA adheres to a regulatory approach that is aligned with other jurisdictions and regulatory fields. It is intelligence led, risk-based and focussed on outcomes.

Intelligence led

NTCA collects intelligence material from a number of sources to inform its regulatory approach. This includes reports from members of the public and industry participants, social media, investigations, and information sharing with national regulators.

Risk-based

NTCA has limited resources and cannot always react to all reports of alleged trader misconduct. We therefore apply a risk-based compliance and enforcement approach to inform and educate, monitor trader and industry behaviour, and assess reports from other sources about concerning conduct. Matters involving significant consumer detriment (where either large sums of money or a large number of people are potentially at risk) are prioritised for further action. The scale of public interest in a particular matter is another factor that informs NTCA's priorities.

Outcome focussed

NTCA aims to facilitate a trading environment that is fair for both consumers and traders, and that ensures both parties adhere to their rights and obligations under the legislation administered by NTCA.

Our regulatory activities are underpinned by the following desired outcomes:

- Compliant trader behaviour through voluntary observation of applicable laws
- Consumers are empowered to participate in the market without being at a disadvantage
- Breaches of consumer protection laws are penalised
- High public confidence in a fair and regulated market.

NTCA tailors its regulatory approach to apply strategies that are best suited to achieve the desired outcome in each individual case. Where a breach of the legislation is detected, the enforcement option shall not only compensate for the breach, but may also aim to influence trader conduct in the future. Any action taken by NTCA may also serve as a deterrent for other industry participants.

Underlying principles and values

Education underpins NTCA's regulatory approach - NTCA believes that educating and informing businesses and consumers about their rights and obligations is a critical driver of legislative compliance and facilitates successful dispute resolution. Other underlying principles and values guiding our approach are:

Objectivity

All staff will consider matters objectively and impartially when providing information, resolving disputes, or analysing potential breaches and enforcing compliance with consumer protection legislation. NTCA does not favour or disadvantage individual subjects, and does not adjust any applicable laws or interpretation to affect outcomes that may be informed by personal preferences. As this is a small jurisdiction, perceived and actual conflicts of interest between staff and traders/consumers are always considered, with steps taken to distance any potential conflict or perceived bias.

Transparency

While adhering to information, privacy and other governance requirements, NTCA will liaise with all parties involved in an open and transparent manner, affording natural justice and procedural fairness.

Confidentiality

We will collect, use, store and disclose information in accordance with the *Information Act 2002 (NT)*, the legislation we administer and the Code of Conduct for the Northern Territory Public Sector. NTCA generally does not comment publicly or to individuals on matters under investigation. Exceptions may apply where the information is already in the public domain, or where the public interest warrants comment. Investigation outcomes may not be published where it is not in the public's interest to do so. In situations where an investigation concludes that no breach has occurred, the subject's name will remain confidential.

Timeliness

NTCA endeavours to attend to matters in a timely and efficient manner, and in accordance with any statutory timeframes. Certain compliance and enforcement actions are subject to internal policies which prescribe additional timeframes within which compliance action should or must be taken, unless it is not practical to do so or where resource constraints apply.

Consistency

NTCA applies the legislation consistently to ensure that past practices and decisions can generally be relied on to predict future outcomes. Precedents may be set aside, however should laws change or where the interpretation of existing legislation is revised. This may result in a change in practice or direction in the future.

Proportionality

When determining the appropriate compliance and enforcement action, NTCA takes into consideration the severity of the offence, the public interest, the need for potential deterrence and other applicable factors to ensure that the breach is met with a proportionate response.

Accountability

NTCA conducts itself in an accountable manner, taking responsibility for decisions and actions, which are defensible and will stand up to scrutiny. NTCA staff are authorised to perform various functions under the CAFTA and are also subject to the Code of Conduct for the Northern Territory Public Sector, which applies to all public service employees in the Northern Territory Government.

National awareness

Subject to statutory requirements and other information sharing agreements, NTCA exchanges data with other consumer affairs regulators and government bodies through national forums. This enables NTCA to stay informed about trends within Australia and overseas that may affect the interests of Territorians, and to disseminate this information where appropriate. When taking action, NTCA is mindful not to interfere with or adversely impact the work undertaken by other regulators.

Response options

NTCA either receives reports about concerning trader conduct, or becomes aware of such practices through pro-active monitoring of the marketplace.

If a matter does fall within NTCA's jurisdiction, an investigation will be undertaken to examine and analyse any information and evidence obtained.

If it is determined that a breach has occurred, NTCA determines the appropriate action, if any, to be taken. This action will be informed by the evidence obtained and the severity of the breach under the legislation, to which any response will be proportionate. NTCA may also take into account other factors, such as previous compliance history, or whether the trader has received education about their rights and obligations. Any relevant intelligence obtained through information sharing with other consumer protection regulators may also be taken into account.

Available tools

A variety of tools are available to NTCA to address matters of non-compliance:



Using a risk-based approach, the response options outlined above are applied with the extent of actual or potential consumer harm in mind, including the number of affected consumers, any public interest, the level of risk and any previous history of non-compliance. Another aspect that NTCA may take into account is whether the interests of vulnerable consumers are involved.

For instance, if a trader has repeatedly committed a relatively minor offence under the legislation and frequently been the subject of education, a stronger compliance action may be warranted as the subject has demonstrated an unwillingness to comply.

Offences posing a high risk and harm to consumers need stronger mitigation strategies that also serve as a deterrent against re-offending, or offending by other traders.

Tools in detail

The available compliance tools serve different purposes and have different levels of risk mitigation.

Take no action

Generally, no action will be taken where breaches are minor or where NTCA is satisfied that the breach was a genuine oversight. Additionally, NTCA will not undertake compliance and/or enforcement action if there is insufficient evidence of a breach, or if the breach is not within NTCA's jurisdiction. In this case, the matter may be referred to the appropriate authority.

Education

NTCA will deliver trader education and provide information to address initial compliance issues, usually via face to face or telephone interaction. In some circumstances, written education may also be warranted, either as a follow up or in circumstances where previous verbal education has not been adhered to.

Caution

A written caution is issued where previous education has not been effective. Cautions are used as a precursor to stronger enforcement action that may be used if further incidents of non-compliance are detected.

Infringement notice

Within the legislation administered by NTCA, certain offences have been prescribed as offences for which infringement notices may be issued.

An infringement notice is a suitable instrument to improve and enforce compliance, as it provides for timely remedial action of offences without requiring the cost and effort to pursue a matter through the court system.

Infringement notices are typically issued where a breach has re-occurred despite education and engagement in relation to previous breaches.

Public warning

It may be appropriate to mitigate the risk of consumer harm on a broad scale by raising public awareness about the practices of a particular trader. If the trader does not provide credible assurances that consumer harm will be made good and that business practices will improve, NTCA may issue a warning to the public to avoid this trader. These warnings can be issued through social media and/or media release.

Enforceable undertaking

An enforceable undertaking is a written agreement between a regulator and a party who has committed an offence under the jurisdiction of that regulator. Enforceable undertakings are used where the offender has demonstrated a willingness to voluntarily remedy a breach, and commits to undertake measures to prevent re-offending in future. Enforceable undertakings are published on the NTCA website.

If the offender breaches the enforceable undertaking, the Commissioner of Consumer Affairs or any other person may apply to the Local Court to order the offender to adhere to the undertaking. Penalties for violating the orders may apply.

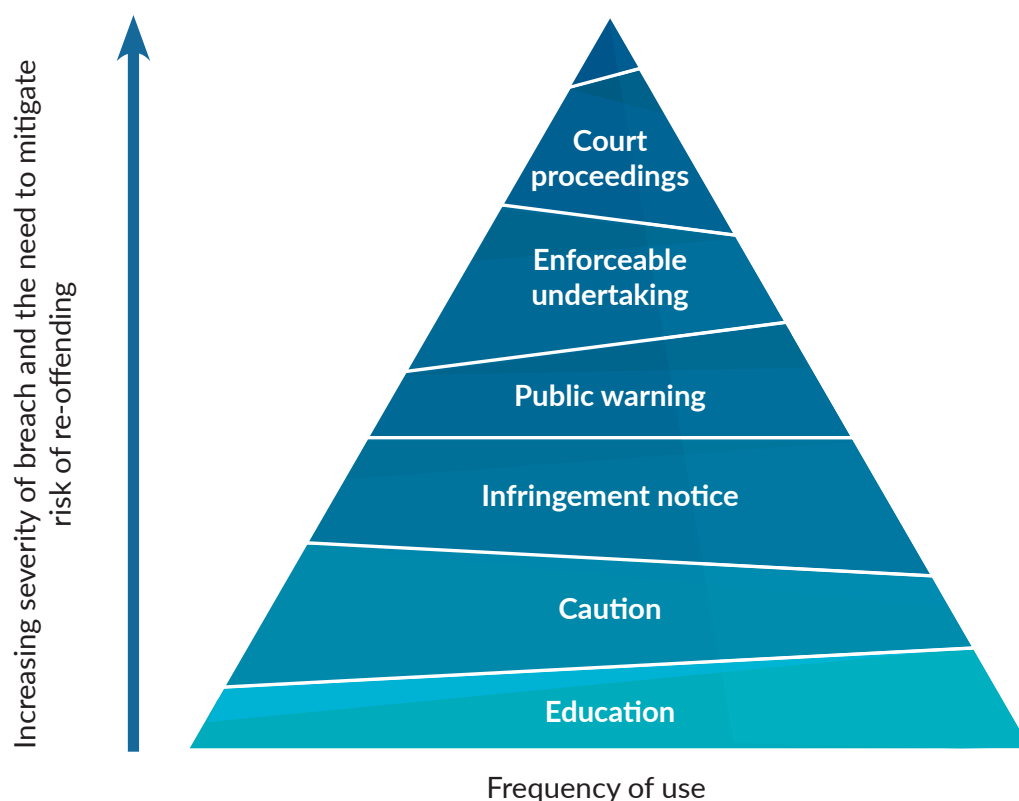
Court proceedings

For serious offences, or in scenarios where breaches continue to occur despite any of the other enforcement actions being applied, NTCA may initiate court proceedings against the offender.

Recipients of infringement notices may elect to have the matter dealt with in the Local Court instead of paying the notice. In these scenarios the infringement notice will be withdrawn, and the court may decide the matter, including the level of any applicable penalty.

Frequency of use in relation to risk

The pyramid below indicates the frequency of use of the compliance tools and their relationship to compliance risks:



Measuring performance

NTCA focuses on addressing emerging issues and trends within our jurisdiction and maintaining compliance in the existing marketplace. Our small size allows us to quickly adjust priorities and direct attention to emerging issues. As such, work is predominately reactive in nature. The small Territory marketplace bears less risk for systemic issues that reach a national scale. Long term compliance strategies to achieve desired outcomes in this regard are therefore not appropriate.

NTCA records contacts with traders, and any compliance actions taken. NTCA also continues to monitor trader behaviour after compliance action has been taken. Monitoring takes place through desktop and field surveillance, as well as reviewing contacts received through our call centre. If re-offending occurs, NTCA will examine the time interval between offences, which may indicate systemic behaviour if the intervals are short, or genuine mistakes if the intervals are long.

Another tool to measure effectiveness is feedback in response to actions that NTCA has undertaken more publicly, such as issuing warnings to the media or through social media accounts.

Stakeholder engagement

NTCA aims to minimise consumer detriment through voluntary compliance. While it is the responsibility of each business to remain across of their regulatory and statutory responsibilities, NTCA conducts extensive outreach activities with businesses and industry stakeholders to ensure that traders receive accurate information and education to help them comply with their obligations in relation to consumer law.

Schedule 1

Northern Territory Consumer Affairs – legislation and statutory offices

LEGISLATION	STATUTORY OFFICE
<i>Accommodation Providers Act 1981 (NT)</i>	
<i>Building Act 1993 (NT)</i>	Commissioner of Residential Building Disputes
<i>Building Regulations 1993 (NT)</i>	
<i>Building (Resolution of Residential Building Work Disputes) Regulations 2012 (NT)</i>	
<i>Building (RBI and Fidelity Fund Schemes) Regulations 2012 (NT)</i>	
<i>Business Tenancies (Fair Dealings) Act 2003 (NT)</i>	Commissioner of Business Tenancies
<i>Business Tenancies (Fair Dealings) Regulations 2004 (NT)</i>	
<i>Caravan Parks Act 2012 (NT)</i>	Commissioner of Tenancies
<i>Caravan Parks Regulations 2012 (NT)</i>	
<i>Consumer Affairs and Fair Trading Act 1990 (NT)</i>	Commissioner of Consumer Affairs
<i>Consumer Affairs and Fair Trading (Fuel Retailers) Regulations 2017 (NT)</i>	
<i>Consumer Affairs and Fair Trading (Infringement Notice Offences) Regulations 2012 (NT)</i>	
<i>Partnership Act 1997 (NT)</i>	Commissioner of Consumer Affairs
<i>Price Exploitation Prevention Act 1949 (NT)</i>	Controller of Prices
<i>Residential Tenancies Act 1999 (NT)</i>	Commissioner of Tenancies
<i>Residential Tenancies Regulations 2000 (NT)</i>	
<i>Retirement Villages Act 1995 (NT)</i>	Commissioner of Consumer Affairs
<i>Retirement Villages Regulations 1995 (NT)</i>	
<i>Sale of Goods Act 1972 (NT)</i>	
<i>Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010</i>	
<i>Uncollected Goods Act 2004 (NT)</i>	
<i>Warehousemen's Liens Act 1969 (NT)</i>	

The background of the page is a geometric composition of several overlapping triangles. A large dark blue triangle occupies the top half. Below it, a lighter blue triangle and a dark grey triangle overlap. At the bottom, a white triangle points upwards, meeting the other shapes. The text is positioned in the white triangle.

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