

# Compliance and enforcement policy



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## Overview

The Queensland Office of Fair Trading's (OFT's) goal is to achieve a fair and safe marketplace.

We recognise that most businesses want to comply with the law and to facilitate this we follow an escalation model of compliance and enforcement. As a trader's attitude to compliance deteriorates, our regulatory response escalates.

We are responsible for the administration of numerous pieces of consumer protection legislation, including laws which regulate specific industries.

The primary piece of legislation we administer is the *Fair Trading Act 1989*, which incorporates the Australian Consumer Law (ACL).

The ACL is a national law, applied under a multi-jurisdictional model. It is administered at the Commonwealth level by the Australian Competition and Consumer Commission (ACCC) and at the state and territory level by each jurisdiction's consumer protection agency.

Each jurisdiction works together to ensure a consistent approach to compliance and the enforcement of the ACL. Our **Compliance and enforcement policy** (CEP) supports this approach.

To assist us to apply our CEP, we have a suite of policies and procedures to guide its operation. These are reviewed annually or following legislative or procedural changes.

It is important to note that this **CEP is not a legal document** and should not be relied on as such. It is a guide and it does not limit our discretion to take any action considered necessary or appropriate under the legislation we administer.

For a list of laws administered by the OFT, visit the **Queensland Government website**.

This CEP sets out the OFT's framework to administer those laws through education, compliance, administrative decisions, and enforcement activities.

# Objectives

Our CEP outlines the OFT's approach to promoting confident consumer participation in the marketplace and in maintaining, encouraging and enforcing trader compliance with the laws we administer. To achieve these objectives we commit to the following activities:

- promoting the interests and awareness of consumers negotiating or considering the acquisition of goods or services
- collecting, examining and disseminating information on matters affecting, or likely to affect, consumers in the marketplace
- undertaking awareness activities to assist consumers and traders to understand their rights and responsibilities under consumer protection legislation
- responding to enquiries and requests in a fair and unbiased manner
- receiving and considering consumer complaints and, where appropriate, investigating alleged breaches of legislation and taking appropriate risk-based enforcement
- providing accessible and timely access to redress where consumer detriment has occurred and where fair trading legislation allows
- receiving and considering licensing and registration applications and monitoring ongoing suitability of licensed industry participants
- taking action to promote and ensure safety in the supply of goods and service
- undertaking timely and effective compliance monitoring initiatives targeting areas of increased consumer risk.

## Delivery of OFT objectives

The OFT's activities, including compliance and enforcement, are delivered throughout Queensland via eight regional offices and the Brisbane office.

# Standards

Our approach to compliance and enforcement is based on the following standards:

Transparency	The OFT operates in an open and transparent manner. OFT's policies are published. Data about licensing, registration, consumer complaints, and OFT enforcement is published online. OFT publishes an annual Outcomes Report detailing its activities.
Confidentiality	The OFT does not generally publicly comment on matters it may or may not be investigating. However, the OFT may comment on matters already in the public domain or where it is in the public interest to do so.
Timeliness	The OFT deals with all matters before it as efficiently and effectively as possible to avoid delays and uncertainty for consumers, businesses, and the marketplace.
Consistency	The OFT does not make ad hoc decisions and commits to giving the marketplace certainty by assessing, investigating, and enforcing the law consistently across comparable situations.
Proportionality	The OFT's actions, decisions, and responses are proportionate to the level of risk, harm, and available resources.
Targeted	Resources are targeted based on marketplace risks, emerging trends, and operational priorities.
Accountability	The OFT is accountable for its decision making and can be reviewed by external agencies, tribunals, and courts.
National awareness	The OFT makes compliance and enforcement decisions cognisant of any national implication of actions taken.
Flexibility	The OFT responds to changing marketplace issues through consideration of complaint and enforcement activities.
Effectiveness	The OFT has access to a suite of education, compliance and enforcement tools and it applies the most appropriate of them to effectively achieve marketplace compliance.

## OFT inspectorate

In order to perform the full range of compliance, inquiry and enforcement functions, our officers must be appointed as inspectors under legislation administered by us or delegated appropriate decision-making powers.

Power to authorise these appointments rests with the Executive Director, OFT, as delegate of the Chief Executive and of the Commissioner for Fair Trading.

Prior to appointment as an Inspector, a person must satisfy the Chief Executive of their suitability for appointment (for example undergo a criminal history check, provide evidence of their capabilities to conduct investigative functions).

## Education and support to the marketplace

We are focused on delivering consumer and trader education and working with business and industry to achieve compliance with the law.

Marketplace intelligence gathering allows us to improve our knowledge of market conditions and the experiences of consumers and traders.

The key activities we undertake to ensure the marketplace remains informed are:

- providing accurate, up-to-date and timely information to both consumers and traders via the Queensland Government's call centre and website and the OFT's social media accounts, and consumer and trader awareness presentations, campaigns and forums
- capturing information on high risk matters via our complaint database to ensure resources and services are delivered to help us address risk
- liaising with consumer protection regulators in other Australian jurisdictions on current and emerging trends and risks
- providing targeted advice and support through our annual proactive compliance program, Proactive Regulation of Industry and Marketplace Environments (PRIME).

We aim to provide informative advice about the legislation we administer which is relevant to the target audience. However, the OFT cannot provide legal advice.

Consumers and traders who need advice about specific issues should consult a qualified legal professional.



# Managing risk of non-compliance

We manage the risk of non-compliance in the marketplace through a strategy comprising four key elements, each working together to assess, inquire, address and analyse information concerning suspected breaches of consumer protection legislation.



## Case assessment

We obtain information from a range of sources including consumer complaints, external agencies, proactive compliance activity, intelligence analysis, social media, and the media.

Our case assessment function considers each matter to determine case complexity, the degree of risk, resources required, and the most appropriate action to be taken.

Considerations include but are not limited to:

- jurisdiction
- whether a contravention of legislation administered by the OFT for which enforcement action can be taken is likely to have occurred
- the previous enforcement or compliance history of a trader
- the potential or actual impact on the integrity of the marketplace
- the seriousness of the activity and its potential to affect a broad range of consumers
- the targeting of vulnerable consumers
- the number of alleged breaches identified about the same or similar conduct or product
- the attitude and behaviour of a trader in identifying and remedying the issue
- the adequacy of evidence available to justify commencing or continuing with an investigation or enforcement action
- the effective and efficient use of resources appropriate to the risk.

As a result of the case assessment, we may take the following action on the case:

- conciliation
- referral to a more appropriate agency
- consideration against the Claim Fund
- investigation, or alternatively declining to progress a matter.

Once a matter is underway, if additional information comes to light the assessment may be changed.

## Declining to investigate a matter

The OFT may decline to commit compliance resources to investigate a matter; or having commenced, may decide to close the matter. Reasons for doing so include but are not limited to:

- insufficient information
- no breach of OFT legislation has been identified
- the matter does not fall within OFT's legislative boundaries
- the matter falls within the jurisdiction of a specialist regulator
- the matter is being investigated by another agency or any OFT action may hinder another agency's investigation of issues raised
- where a breach is identified and is of an administrative nature that is best handled through education
- systemic issues raised require a more strategic approach rather than the investigation of individual complaints
- there is a very low likelihood of successful enforcement
- the complainant is not prepared to support their complaint in writing or in court or tribunal proceedings
- a matter has been lodged with, or heard by, a court or tribunal
- the trader, complainant or key witnesses cannot be located
- suitable compliance action has already been taken against trader around the same time as the matter came to the OFT's attention
- the investment of resources outweighs the possibility of a successful outcome.

## Conciliation

Conciliation is an informal process we undertake to attempt to resolve consumer complaints about businesses which do not indicate a breach of consumer protection legislation for which we can take enforcement action.

If the conciliation process does not achieve an outcome the complainant considers suitable, they can progress their matter to an appropriate court or tribunal, such as the Queensland Civil and Administrative Tribunal (QCAT).

OFT legislation provides that where a conciliated matter proceeds to QCAT the Tribunal can call for a copy of our file to assist it in its determination of the matter. Alternatively, the consumer can seek independent legal advice about options available to them.



## Inquiry

Where case assessment determines a breach of legislation, the level of non-compliance and consumer detriment will determine if we undertake an investigation. We will primarily ascertain the facts surrounding the issue, evaluate and secure any evidence obtained and, where relevant, consider appropriate enforcement action.

Investigative action is undertaken with procedural fairness, in compliance with privacy laws, and in accordance with the Department of Justice (DoJ) and the OFT's policies and procedures.

The purpose of enforcement action is to:

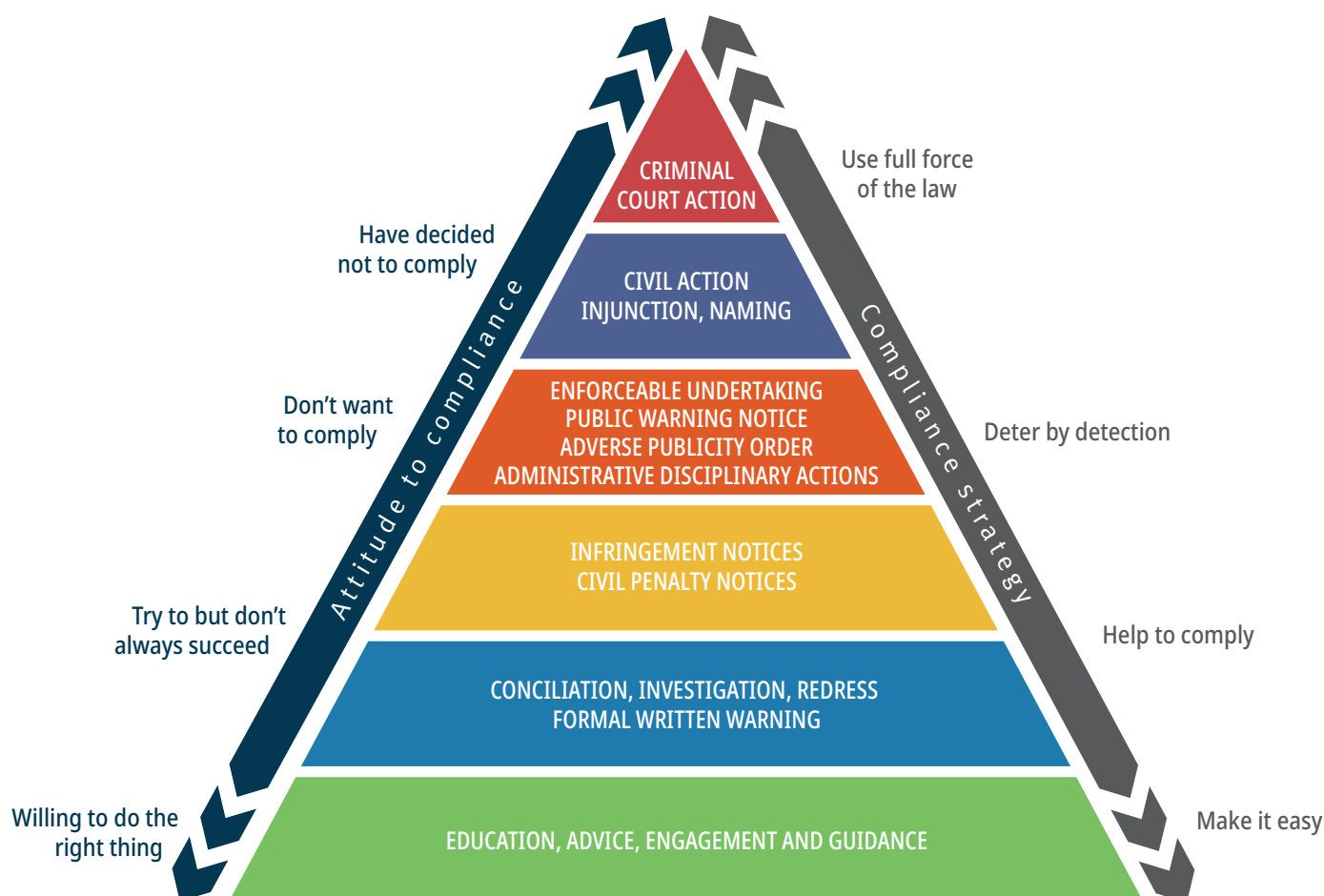
- encourage compliance with fair trading legislation
- penalise non-compliant behaviour effectively and efficiently
- encourage traders to apply corrective action for less serious breaches
- penalise traders with stronger enforcement action if they fail to address minor matters
- promote community confidence in the marketplace and in the OFT.

## Enforcement action

The sufficiency of credible evidence, degree of public interest, degree of risk and seriousness of the breach are key considerations when deciding whether enforcement action is appropriate. The more serious the matter, the stronger the enforcement action, such as prosecution or disciplinary proceedings.

### The OFT's compliance model

We are aware that traders will generally comply, or try to comply, with their statutory obligations. Therefore, we seek to educate and inform where genuine attempts at compliance are being made. Equally, we will impose the full force of the law when there is evidence of serious non-compliance or systemic or recidivous breaches.



## Non-enforcement action

Matters that fall within the OFT's jurisdiction but do not constitute a breach of legislation, or where an alleged breach is assessed as low risk or the matter cannot be dealt with by legislative enforcement action, are generally classed for non-enforcement action which includes, but is not limited to the following:

- conciliation on behalf of a consumer
- a compliance spot check on the trader
- an educational approach with the trader in the form of a trader visit or delivery of educational material.

## Review process

The OFT conducts regular and ongoing case file reviews, as well as a final review upon closure. Minor matters may only require a review upon closure.

Information gathered from reviews assists us to analyse our compliance business by helping to identify proactive compliance activity, system improvements and future compliance initiatives.

## External requests for a review

Reviews of complaints received about the OFT, its staff or its internal administrative business practices are conducted using DoJ's **Client complaint management policy** which provides for a specific internal review process.

It should be noted, complaints about the outcome decision on a matter do not fall within the scope of the DoJ's **Client complaint management policy**. These matters are reviewed internally by an officer senior to the officer who conducted the matter.

Where a complainant remains dissatisfied, they will be referred to the Queensland Ombudsman, which is the agency responsible for considering issues associated with government agencies decision making.

# Accountability

The OFT is fully accountable for its actions and therefore aims to ensure consumers, traders, external agencies and stakeholders understand the OFT's objectives and standards and the factors taken into consideration when making its compliance and enforcement decisions.

DoJ's Ethical Standards unit, as well as a number of external agencies, including the Queensland Ombudsman and the Crime and Corruption Commission, can investigate complaints about the actions and decisions of our staff. Information on compliance outcomes can also be provided to individuals seeking information under right to information laws.

The OFT commits to transparency in its delivery of its functions and will always cooperate fully with enquiries and requests made by valid external agencies.

The compliance, enforcement and educational functions undertaken by the OFT are in accordance with section 58(5) of the *Human Rights Act 2019* which requires public entities to give proper consideration to human rights. The OFT will also determine if OFT's legislative obligations limit human rights under section 13 of the *Human Rights Act 2019*.

# Related OFT policies

Where appropriate, we also incorporate relevant DoJ policies and procedures, national consumer affairs action plans and best practice guides during the course of compliance and investigative duties. Where unforeseen circumstances or emergency situations arise, we will also follow current Government and departmental directives.

## Office of Fair Trading

[www.qld.gov.au/fairtrading](http://www.qld.gov.au/fairtrading)

Phone: 13 QGOV (13 74 68)

Email: [Brisbane.OFT@justice.qld.gov.au](mailto:Brisbane.OFT@justice.qld.gov.au)

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