

Office of Fair Trading

Public information disclosure policy

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1. Purpose

To outline the circumstances where public information disclosures (including public naming and public warnings) by the Office of Fair Trading (OFT) about a trader's activities are appropriate enforcement options. This policy aims to ensure that any public information disclosure is undertaken in an appropriate and defensible manner by considering the competing interests of the community and the trader prior to a decision being made to release information.

This policy will be reviewed annually or following legislative or procedural changes.

2. Scope

The policy applies to all OFT officers involved in naming a trader under the:

- Australian Consumer Law (Queensland) (ACL(Q))
- *Fair Trading Act 1989* (FTA)
- *Fair Trading Inspectors Act 2014* (FTIA)
- *Property Occupations Act 2014* (POA)
- *Motor Dealers and Chattel Auctioneers Act 2014* (MDCA)
- *Debt Collectors (Field Agents and Collection Agents) Act 2014* (DCA)
- *Agents Financial Administration Act 2014* (AFAA).

3. Out of scope

The Minister can disclose information about a trader in parliament as under the *Parliament of Queensland Act 2001* such statements are protected by parliamentary privilege.

Information about a trader may be disclosed in documents tabled in parliament, such as an Annual Report, as documents tabled in parliament are also protected by parliamentary privilege.

A public information disclosure excludes the disclosure or publication of information that is already public e.g. the outcome of a court proceeding.

4. References

This policy should be read in conjunction with:

- OFT's *Public information disclosure procedure*
- The Department of Justice and Attorney-General (DJAG) *Public interest disclosure policy*
- *Public Interest Disclosure Act 2010*
- *Information Privacy Act 2009* – particularly Schedule 3 – Privacy Principles.
- OFT's *Disclosure of complaint-related information and privacy policy*.

5. What is public information disclosure?

For the purpose of this policy, public information disclosure is any public release or publication of information containing identifying information of a trader whose activities are of concern to OFT.

Publicly disclosing information about a trader may have serious implications for the livelihood and reputation of the trader and for any related industry. As a sanction, it may be far more damaging (and effective) than a monetary fine imposed by a court or tribunal. Equally, consumers may suffer losses and inconvenience as a consequence of failing to disclose information about a trader, or of doing so too late. Inappropriate or untimely public information

disclosures, or failing to publicly disclose information about a trader may expose the Minister, Commissioner and OFT to public criticism and long term reputational damage.

Where information about a trader is publicly disclosed outside of parliament and without the protection of the Acts noted in the Scope of this policy, the normal laws of defamation apply. In such cases the Minister, Commissioner and authorised officers can only rely upon the defences of truth and public benefit.

Public information disclosure aims to influence trader behaviour and to protect consumers by:

- exerting public pressure on a particular trader to remedy unfair trading practices
- deterring other traders from using unfair trading practices
- reducing consumer detriment by warning Queenslanders about a trader or particular products
- increasing consumers' awareness of their rights and ways to avoid problems when dealing with traders.

6. Public information disclosure under FTA and FTIA

Section 11 (1) (c) of the FTA allows for the Commissioner to disseminate information regarding matters affecting or likely to affect the interests of consumers or persons regarding the acquisition of goods or services.

Section 109 of the FTA provides for a limitation of action against the Minister, the Commissioner or by someone on the Commissioners behalf, for any disclosure or publication made in good faith about:

- the supply of goods or services
- the commercial or business reputation of any person associated with the supply of goods or services
- the quality or standard of goods or services supplied by any person, and/or
- a contravention or alleged contravention of the FTA or the operation or enforcement of the FTA.

Section 110 (2) of the FTA allows an agency to communicate information for the purpose of the administration of any Commonwealth, State or Territory law, or where permitted under the FTA.

Section 92 (2) (b) of the FTIA allows for the disclosure of information that has become known to an inspector in the performance of functions under the FTIA, if it is authorised under an Act or another law.

7. Public information disclosure under AFAA, DCA, MDCA or POA

7.1. AFAA – Section 148 – Public warning statements

The Minister or Chief Executive may make or issue a public statement identifying and giving warnings or information about the commission of offences under the AFAA and the persons who have committed the offences, if it is in the public interest to do so.

7.2. DCA – Section 145 – Public warning statements

The Minister or Chief Executive may make or issue a public statement identifying and giving warnings or information about, contraventions of the DCA resulting in Queensland Civil and

Administrative Tribunal action, unfair business practices and the persons who have committed the offences, if it is in the public interest to do so.

7.3. MDCA – Section 231 – Public warnings

The Minister or Chief Executive may make or issue a public statement identifying and giving warnings or information about, contraventions of the MDCA resulting in disciplinary action, unfair business practices and the persons who have committed the offences, if it is in the public interest to do so.

7.4. POA – Section 230 – Public warnings

The Minister or Chief Executive may make or issue a public statement identifying and giving warnings or information about, contraventions of the POA resulting in disciplinary action, unfair business practices and the persons who have committed the offences, if it is in the public interest to do so.

8. Public information disclosure under ACL

A public warning may only be issued under circumstances specified in the ACL and may only be issued by ACL regulators. The Queensland OFT is an ACL regulator. Section 223(1) of the ACL provides that a public warning notice may be issued when:

- a regulator has reasonable grounds to suspect that conduct may constitute a contravention of the provision of Chapter 2, 3 or 4 of the ACL, **and**
- the regulator is satisfied that one or more other persons has suffered, or is likely to suffer, detriment as a result of the conduct, **and**
- the regulator is satisfied that it is in the public interest to issue the notice

OFT staff must ensure they have sufficient information to satisfy each criterion. OFT may also issue a public warning notice in cases where an individual refuses to respond to a substantiation notice (ACL section 223(2)).

9. Why should information be disclosed publicly?

Public information disclosures should be used only when the community's right to know of OFT's concerns regarding a particular trader outweighs the trader's right to not have its trading reputation potentially adversely impacted by the information being disclosed.

To support such a judgement, OFT should form a reasonable belief that the marketplace is at serious risk from the trader's activities e.g. the trader's conduct has been grossly unfair or otherwise poses imminent risk of financial or other loss or personal injury to the public.

10. How is information disclosed publicly?

A 'Recommendation for public disclosure of information' is completed by OFT when recommending to name a trader or warn the public about a trader. The recommendation contains information to support and justify OFT's decision to disclose trader information. Prior to disclosure, the trader is advised in writing of the proposed disclosure and is afforded a reasonable period of time (generally 7 calendar days) to respond to OFT with advice on any intended rectification of an issue.

Note: The decision to afford a trader an opportunity to respond must be taken in light of the degree of risk posed to the community by delaying the possible disclosure action. OFT has the

discretion to decide if a trader is given the opportunity to respond or rectify a situation or if any notice is given to the trader prior to the disclosure being actioned.

Once it is decided to publicly disclose information, OFT Officers are to follow instructions provided in OFT's *Public information disclosure procedure* which includes approval processes which must be adhered to prior to publicly releasing information.

Disclosure of information can be undertaken through:

- an official media release – once released, the media statement is published on the OFT website for three years
- a media statement or interview (radio or television) – most likely in response to a media enquiry about a particular trader
- SSQ scripting
- the Queensland Government website – once released, the information may remain on the Queensland Government website for as long as OFT deems appropriate.

Following approval by the Commissioner or Minister to disclose information, the manager of the OFT Communication Unit, is to be notified and provided with a draft public information disclosure statement. Prior to any release, the Commissioner or Minister must approve the statement(s).

11. Media and other enquiries

OFT's Communication Unit is responsible for managing OFT's interaction with the media in accordance with departmental and whole of government protocols.

Responses to enquiries about a public information disclosure must be restricted to information contained in the approved disclosure statement. If an enquiry seeks information **not** contained in the public information disclosure statement, the OFT will decide whether it is in the public interest (and consistent with the intent of the original public information disclosure) to release the supplementary information requested.

Public warnings are posted on the Queensland Government website at '[Businesses and traders to avoid](#)'. The information publicly available may also be provided to other fair trading regulators for their information.