

Compliance check policy

Office of Fair Trading

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1. Purpose and scope

This policy defines compliance checks as undertaken by Office of Fair Trading (OFT) inspectors.

Along with this policy, OFT inspectors will also follow the processes noted in the OFT's:

- Entry search and seizure policy
- Case management manual
- Compliance and enforcement policy
- Evidence (exhibit) and property handling procedure
- The current PRIME program
- Client aggression policy

2. Compliance check types

Compliance checks assess the level of compliance of a person, organisation, product, service, business practice or process with the applicable legislation. They may also include education visits, where the primary focus is to provide information and advice.

The OFT undertakes four (4) types of compliance checks:

1. **Education visit:** an onsite visit or desktop contact (e.g. via phone or direct email) to a trader to provide educational advice and resources.
2. **Compliance spot check:** an onsite visit to a trader to assess compliance with industry specific legislation.
3. **Desktop/mail out check:** an assessment of a trader's compliance with industry specific legislation undertaken by an inspector remotely. This assessment commonly involves online desktop assessments, and/or telephone checks directly with a trader.
4. **Consumer product safety check:** assessing a trader's compliance with mandatory safety requirements, information standards and bans.

3. Reasons for compliance checks

Compliance checks may be undertaken at any time for the following reasons:

- History of non-compliance (e.g. follow-up visit to check a trader's compliance following previous enforcement action).
- Information received which indicates a compliance check would be an appropriate form of action (e.g. a low risk, non-investigation inquiry).
- new legislation or significant amendments to existing legislation.
- Complaints received which warrant further investigation
- As part of the OFT's Proactive Regulation of Industry and Marketplace Entities (PRIME) Program.

Education visits provide an opportunity for inspectors to discuss business practices and legislative requirements, and to provide supporting materials and resources. However, if an inspector identifies serious or multiple breaches of legislation during an education visit, the inspector may opt to record the activity as a compliance spot check instead of an education visit.

Education visits and compliance checks are a form of non-enforcement action which is expanded on in chapter 7 of the OFT's Case Management Manual (CMM).

4. Conducting compliance checks

4.1 Target selection

Targets for compliance checks may be identified from a variety of sources including:

- Internal data – e.g. complaints, investigations and enforcement actions
- Data and information supplied by external law enforcement agencies
- target registers in the Intelligence Hub
- identifying licensees and traders who have never been subject to a compliance check
- monitoring national trader concerns and issues
- monitoring the internet and online marketplace
- monitoring general consumer news and topical issues
- monitoring trending conversations and topics on social media
- monitoring product review websites or forums
- maintaining an efficient stakeholder intelligence network.

Potential targets identified by officers should be entered into the registers within the Intelligence Hub in Microsoft TEAMS. If officers do not have access to the Hub, please contact: psd.oft@justice.qld.gov.au

4.2 Undertaking a compliance check

Compliance checks should be undertaken by one or more appointed inspector/s. Inspectors conducting compliance checks on site (spot checks) must produce or display their inspector's identification upon arrival.

Inspectors must ensure their actions, observations, conversation and events relevant to the compliance check are sufficiently recorded in file notes in the Marketplace Accreditation and Compliance System (MACS), and in their official notebook where breaches are identified. These notes MUST be recorded contemporaneously, so they are able to be used to assist officers if required during evidence in chief at trial. If the inspector is accompanied by another officer, these notes are to be corroborated. All evidence should be photographed in situ at the time of the check.

The [Spot check reference guide](#) provides guidance on undertaking compliance checks on the OFT's regulated industries.

4.3 Human Rights considerations

The OFT's compliance check activities are undertaken in accordance with section 58 of the *Human Rights Act 2019* (HRA) which requires public entities to consider human rights. Section 13 of the HRA is also considered to determine if human rights are limited by the OFT's legislative obligations.

4.4 Recording checks

The OFT's MACS compliance manual provides detailed instructions for recording compliance checks.

PRIME operations should be entered under the appropriate operation name as defined within the annual PRIME program.

Generally, each individual contact (education visit, compliance spot check or desktop/mail out) represents one compliance check. However, if follow up contact is required to gather the necessary information to complete the compliance check, these contacts are counted as one check only.

An exception applies when the trader holds licences for more than one type of occupation but operates from one address. The following scenarios illustrate how this exception might apply:

- 1) **Real estate agency**
Licensed company – the principal holds an individual licence and employs several registered salespersons.

This counts as one compliance check.
- 2) **Real estate agency and auctioneer**
Licensed company – the principal holds an individual licence and employs several registered salespersons – the principal or some other individual/s in the office holds an auctioneer's licence.

This counts as two compliance checks, provided checks are conducted for both real estate agency and auctioneer compliance requirements.

4.5 Unforeseen circumstances

Where emergency situations or unforeseen circumstances arise, inspectors are to follow any interim Government or departmental directives applicable and/or the division's business continuity plan when conducting compliance activities and interacting with the public.

5. Consumer product safety checks

Product safety checks involve assessing compliance of specific consumer goods with mandatory national safety and information standards and bans, enforced under the Australian Consumer Law (ACL).

Inspectors must complete product safety checklists specific to the product they are assessing. These checklists are developed by the Consumer Product Safety Unit (CPSU).

Generally, one trader visit represents one compliance check. The exception is where the trader is checked for compliance with more than one mandatory standard or ban.

The following scenarios illustrates how this exception might apply:

- 1) A compliance check of the mandatory standards for children's' toys up to and including 36 months is undertaken at one site. In this instance, one spot check has been conducted, regardless of the number of individual toy product lines inspected.
- 2) A compliance check of the mandatory standards for children's' toys up to and including 36 months is undertaken at one site. Additionally, another regulated consumer good such as aquatic toys are also checked during this same site visit. This would then constitute two compliance checks.