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.

The OFT is responsible for the administration of numerous pieces of consumer protection legislation, including laws which regulate specific industries.

This Compliance and enforcement policy (CEP) sets out the OFT’s framework in administering these laws through education, compliance, administrative decisions, and enforcement activities.

Visit www.qld.gov.au for a list of legislation and laws administered by the OFT.

The primary legislation administered by the OFT 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.

Nationally, jurisdictions work together to ensure a consistent approach to compliance and enforcement of the ACL. This CEP supports this approach.

To assist the OFT apply this CEP, the OFT has a suite of policies and procedures to guide its operation. This CEP, and its supporting policy and procedural guides, is reviewed annually or following legislative or procedural changes.

It is important to note that this Compliance and enforcement policy is not a legal document and should not be relied on as such. It is a guide and it does not limit the discretion of the OFT to take any action it considers necessary or appropriate under the legislation it administers.
Objectives

This 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 the OFT administers. To achieve these objectives the OFT commits to the following activities:

• Promoting the interests and awareness of consumers in 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 understand their rights and responsibilities under consumer protection legislation
• Responding to enquiries and requests in a fair and unbiased manner
• Receive and consider licensing and registration applications and monitor ongoing suitability of licensed industry participants
• Taking action to promote and ensure safety in the supply of goods and services
• 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

The OFT’s approach to compliance and enforcement is based on the following standards:

<table>
<thead>
<tr>
<th>Standard</th>
<th>Description</th>
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<tbody>
<tr>
<td>Transparency</td>
<td>The OFT deals with consumers and traders in an open and transparent manner to ensure service delivery standards are met. Decisions made by the OFT can be reviewed through a range of avenues including the department, the Queensland Ombudsman, Tribunals and the courts.</td>
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<tr>
<td>Confidentiality</td>
<td>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.</td>
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<tr>
<td>Timeliness</td>
<td>The provision of information and advice, consumer complaint handling, licensing and registration applications, investigation processes, and the resolution of enforcement matters, are dealt with as efficiently and effectively as possible within OFT’s resource allocation.</td>
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<tr>
<td>Consistency</td>
<td>The OFT does not make ad hoc decisions and commits to giving businesses certainty by assessing, investigating and enforcing the law consistently across comparable situations.</td>
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<tr>
<td>Proportionality</td>
<td>Administrative decisions and enforcement action taken by the OFT are in proportion to the seriousness of the matter, the level of consumer detriment and the impact on the marketplace.</td>
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<tr>
<td>Targeted</td>
<td>The OFT makes effective use of limited resources by targeting issues and trader in line with risks, new and emerging trends and operational priorities.</td>
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<tr>
<td>Accountability</td>
<td>The OFT is accountable for its compliance, administrative decision making and enforcement activities and applies investigation methodologies and administrative processes with identifiable responsibilities.</td>
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<td>National awareness</td>
<td>The OFT makes compliance and enforcement decisions cognisant of any national implication of actions taken.</td>
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<td>Flexibility</td>
<td>The OFT responds to changing marketplace issues through consideration of complaint and enforcement activities.</td>
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<tr>
<td>Effectiveness</td>
<td>The OFT has access to a suite of education, compliance and enforcement tools and applies those identified as most appropriate to effectively achieve marketplace compliance.</td>
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OFT inspectorate

In order to perform the full range of compliance, inquiry and enforcement functions, OFT officers must be appointed as inspectors under legislation administered by the OFT 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, including for example against criminal history check criteria and provide evidence of their capabilities to conduct investigative functions.
Education and support to the marketplace

The OFT is focused on delivering consumer and trader education and working with business and industry to achieve compliance with the law. Marketplace intelligence gathering allows the OFT to improve its knowledge of market conditions and the experiences of consumers and traders.

The key activities undertaken by the OFT to ensure the marketplace remains informed are:

- Providing accurate, up-to-date and timely information to both consumers and traders via the government’s call centre, the OFT’s website and social media portals and through consumer and trader awareness presentations, campaigns and forums
- Capturing information on high risk matters via the OFT’s complaint database to ensure resources and services are delivered to assist the OFT in addressing risk
- Liaising with consumer protection regulators in other Australian jurisdictions on current and emerging trends and risks
- Providing targeted advice and support through the OFT’s annual proactive compliance program, Proactive Regulation of Industry & Marketplace Environments (PRIME).

The OFT aims to provide informative advice about the legislation it administers 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

The OFT manages the risk of non-compliance in the marketplace through a strategy compromising four key elements, each working together to assess, inquire, address and analyse information concerning suspected breaches of consumer protection legislation.
Case assessment

The OFT obtains information from a range of sources including consumer complaints, external agencies, its pro-active compliance activity, intelligence analysis, and from the media, including social media.

OFT’s 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 of the OFT
- Whether a contravention of legislation administered by the OFT—for which enforcement action can be taken—is likely to have occurred
- Previous enforcement or compliance history of a trader
- Potential or actual impact on the integrity of the marketplace
- Seriousness of the activity and its potential to affect a broad range of consumers
- The targeting of vulnerable consumers
- Number of alleged breaches identified regarding the same or similar conduct or product
- Attitude and behaviour of a trader in identifying and remedying the issue
- Adequacy of evidence available to justify commencing or continuing with an investigation or enforcement action
- Effective and efficient use of resources appropriate to the risk.

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

- conciliation
- referral to a more appropriate agency
- consideration against the Claim Fund
- investigation or;
- that the OFT will decline to progress a matter.

Assessments and actions undertaken may change if additional information comes to light during the course of a matter.
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
- 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 undertaken by the OFT to attempt to resolve consumer complaints. Conciliation is relied on where the business issue does not indicate a breach of consumer protection legislation for which the OFT 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). The OFT’s legislation provides that where a conciliated matter proceeds to QCAT the Tribunal can call for a copy of the OFTs 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 noncompliance and consumer detriment will determine if an investigation will be undertaken. The OFT 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 and Attorney General’s (DJAG) and the OFT’s policies and procedures.
Enforcement action

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

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.

The OFT's compliance model

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

The OFT’s compliance framework provides for five breach categories of investigations—Category 0 to Category 4, rated highest to lowest risk respectively. The model below provides for an example of enforcement options applicable against the breach categories.

![Enforcement options and breach categories diagram](image-url)
Breach categories

For the purposes of case management, the OFT categorises investigation files as outlined below. The OFT will also take into consideration the complexity and priority of a matter (low medium or high) and other factors such as consumers affected and the extent of the misconduct, before making a final category decision. Each category is allocated a completion timeframe depending on the complexity and priority of a matter.

<table>
<thead>
<tr>
<th>Category</th>
<th>Completion timeframe</th>
<th>Assessment (general)</th>
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<tbody>
<tr>
<td>0 Extreme risk</td>
<td>Within 365 days</td>
<td>Including but not limited to: issues likely to involve systemic and highly serious misconduct by a trader or may involve large scale detriment or relate to a national multi-jurisdictional issue.</td>
</tr>
<tr>
<td>1 Very high risk</td>
<td>Between 90 and 180 days</td>
<td>Including but not limited to: issues displaying elements of deceit or dishonesty, false or misleading conduct, consumer detriment and behaviour which seriously impacts on a safe and equitable marketplace.</td>
</tr>
<tr>
<td>2 High risk</td>
<td>Between 90 and 180 days</td>
<td>Including but not limited to: undermining regulations or consumer protection requirements, risk to vulnerable consumers and disadvantaged groups and failure of product safety standards.</td>
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<tr>
<td>3 Moderate risk</td>
<td>Within 60 days</td>
<td>Including but not limited to: complaints of a minor issue that may evolve into larger issues if not addressed or behaviour that may impact upon the marketplace causing detriment to consumers.</td>
</tr>
<tr>
<td>4 Low risk</td>
<td>Within 30 days</td>
<td>Including but not limited to: breaches that can be effectively and efficiently dealt with other than by investigation, or behaviour unlikely to impact on the marketplace or cause consumer detriment.</td>
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</tbody>
</table>

The category level of a matter may change during the case management process based on changes in context factors, new information or evidence arising during an inquiry.
Non-enforcement action

Matters falling within the OFT’s jurisdiction but not providing for a breach of legislation, or where an alleged breach is assessed as ‘low risk’ (Category 4) 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 of a matter
- 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 prior to a final review being conducted. Minor matters may only require a review upon closure.

OFT officers conduct self-reviews throughout the complaint management process with their supervisor/manager reviewing their actions during an inquiry or investigation. The OFT also regularly reviews a sample of case files. These reviews allow for examination of the OFT’s case management practices to ensure performance is reliably maintained. Annual reviews also confirm enforcement action is appropriate and is being consistently applied to secure the most appropriate enforcement outcomes.

File review processes ensure the OFT is transparent, unbiased and accountable in its actions, factors which are tested if an internal review is requested by a complainant, or an external review is instigated through an agency such as the Queensland Ombudsman.

Information gathered from reviews assists the OFT analyse its 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 DJAG’s Client complaint management policy which provides for a specific internal review process.

It should be noted, complaints about the OFT’s outcome decision on a matter do not fall within the scope of the DJAG’s Client complaint management policy. These matters are reviewed in the first instance 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.

DJAG’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 the OFT. 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.
## Related policies

<table>
<thead>
<tr>
<th>Policy</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Claim fund decision, referral and approval delegation</strong></td>
<td>Outlines delegations to decide and approve or refer claims lodged through the Claim Fund established under the <em>Agents Financial Administration Act 2014</em> (AFAA).</td>
</tr>
<tr>
<td><strong>Client aggression</strong></td>
<td>Raises awareness and understanding of potential conflict in client relations and provides fair trading officers with strategies and techniques for dealing with conflict.</td>
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<tr>
<td><strong>Cold call investment fraud</strong></td>
<td>The strategy adopted by the OFT for dealing with complaints about investment related cold call fraud activity.</td>
</tr>
<tr>
<td><strong>Conflict of interest</strong></td>
<td>A guide to identifying and managing actual or potential risks of conflict of interest arising during staff’s duties as a public official.</td>
</tr>
<tr>
<td><strong>Disclosure of complaint related information</strong></td>
<td>To outline and clarify the OFT policy on disclosure of information related to compliance and enforcement functions, including complaint investigation outcomes.</td>
</tr>
<tr>
<td><strong>Enforceable undertaking</strong></td>
<td>The OFT’s policy on the process, contents, acceptance, use and enforcement of written undertakings made by a company, entity or individual as an alternative to civil or administrative enforcement action for a contravention of legislation administered by the OFT.</td>
</tr>
<tr>
<td><strong>Entry search and seizure</strong></td>
<td>Outlines and clarifies the OFT’s policy on entry, search and seizure activities relating to compliance and enforcement duties.</td>
</tr>
<tr>
<td><strong>Odometer tamper claims against the Claim Fund</strong></td>
<td>A guide to undertaking investigations into odometer tampering claims made against the Claim Fund.</td>
</tr>
<tr>
<td><strong>Public information disclosure</strong></td>
<td>Outlines circumstances where public information disclosures are appropriate.</td>
</tr>
<tr>
<td><strong>Compliance check definition</strong></td>
<td>Clarification of a compliance check.</td>
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Where appropriate, the OFT also incorporates relevant DJAG policies and procedures, national consumer affairs action plans and best practice guides during the course of compliance and investigative duties.