

Office of Fair Trading

REGULATOR PERFORMANCE REPORT 2021-22

Regulation plays an important role in keeping Queenslanders safe and healthy, by ensuring business and individuals act in a way that is consistent with legislative and community expectations. However, excessive regulation can be an impediment to business growth and innovation, especially where the regulatory burden is not proportionate to the issues that regulation is trying to address. The Queensland Government recognises the importance of streamlining regulation to make it easier to do business.

To achieve this, the government has identified a number of model practices that support the achievement of policy objectives through better interactions between regulators and their stakeholders, resulting in reduced administrative burdens and costs for all parties. These practices are consistent with principles adopted in other jurisdictions nationally and internationally.

The **five model practices** are:

1. ensure regulatory activity is proportionate to risk and minimises unnecessary burden
2. consult and engage meaningfully with stakeholders
3. provide appropriate information and support to assist compliance
4. commit to continuous improvement
5. be transparent and accountable in actions

The Office of Fair Trading (OFT) is Queensland's marketplace regulator. We administer various marketplace laws that set out the rights and responsibilities of Queensland's consumers, businesses and certain licensed occupations. We work with our stakeholders in a way which upholds and extends on the five model practices.

OFT's key clients and stakeholders include:

- consumers and businesses
- OFT regulated entities
- industry associations
- not-for-profit organisations
- community groups, schools and service organisations
- other government and regulatory bodies



MODEL PRACTICE 1 - Ensure regulatory activity is proportionate to risk and minimises unnecessary burden

Supporting principles:

- a proportionate approach is applied to compliance activities, engagement and regulatory enforcement actions
- regulations do not unnecessarily impose on regulated entities
- regulatory approaches are updated and informed by intelligence gathering so that effort is focused towards risk

Our [Compliance and Enforcement Policy](#) (CEP) outlines our approach to promoting confident consumer participation in the marketplace and maintaining, encouraging and enforcing trader compliance with the laws we administer.

We obtain information about possible breaches of consumer laws from a range of sources including consumer complaints, other government agencies, proactive compliance activity, intelligence analysis, industry associations and from the media.

Our [Proactive Regulation of Industry and Marketplace Entities](#) (PRIME) program is developed and conducted each year based upon identified risks and marketplace analysis. Higher risk industry sectors and traders receive greater focus, with the aim of maximising compliance and industry education outcomes. The 2021-22 PRIME program saw the introduction of a 3-tiered approach to proactive compliance activities to provide more information about the level of effort involved and the reach of the activities.

We use a range of activities and powers to achieve compliance with the law. These include:

- educating businesses and consumers
- working with industry groups to promote good practices
- licensing or registering participants of some industries and the not-for-profit sector
- receiving and considering complaints
- undertaking investigations and compliance activities, and
- taking appropriate enforcement action.

We ensure our approach to possible breaches of fair trading laws is proportional to the risk involved. Generally, traders will comply, or seek to comply with their obligations. Where genuine attempts at compliance are being made, we focus on educating and informing traders. Where there is evidence of serious non-compliance or systemic breaches, we will impose the full force of the law.

The impact on consumers and the marketplace, the compliance history of the trader, the seriousness of the offence, and the sufficiency of admissible evidence are key considerations in determining the appropriate enforcement action.



We continue to work closely with other Australian consumer protection regulators to administer the Australian Consumer Law (ACL) under the 'one law multi-regulator' model, ensuring a consistent application of the law across the country, providing certainty to traders about their obligations while reducing their risks and compliance costs.

In December 2021, we progressed the Agents Financial Administration Act Amendment Regulation 2021 to enable agents, including real estate agents, motor dealers and debt collectors, to use electronic bill payment platforms, such as BPAY, for trust account transactions.

Throughout 2021-22, we progressed reforms to the *Collections Act 1966*, Collections Regulation 2008 and the Associations Incorporation Regulation 1999 to simplify and nationally harmonise aspects of charitable fundraising. While the Australian Charities and Not-for-profits Commission (ACNC) is the national regulator of charities, fundraising activities are regulated by the States and Territories. This can lead to overlapping authorisation, reporting, and conduct requirements for charities that fundraise nationally, including online.

From 29 July 2022, associations and fundraisers registered with the ACNC only need to provide financial reports to the ACNC, removing a duplicative state reporting requirement. The amendments also reduce the regulatory burden by raising the threshold for when an association must get its financial statements audited.

On 26 May 2022, the Casino Control and Other Legislation Amendment Bill 2022 (Bill) was introduced into the Legislative Assembly. The Bill will amend the Collections Act to introduce a cross-border recognition scheme under which ACNC registration is recognised as an authority to fundraise in Queensland. The Bill will also streamline the application process for non-ACNC charities by removing the ability to object to an application to register as a charity.



MODEL PRACTICE 2 - Consult and engage meaningfully with stakeholders

Supporting principles:

- formal and informal consultation and engagement mechanisms are in place to allow for the full range of stakeholder input and Government decision-making circumstances
- engagement is undertaken in ways that help regulators develop a genuine understanding of the operating environment of regulated entities
- cooperative and collaborative relationships are established with stakeholders, including other regulators, to promote trust and improve the efficiency and effectiveness of the regulatory framework

We actively engage with our stakeholders including consumers, traders, regulated entities, and representative organisations. Throughout the year we undertake a range of stakeholder engagement activities including speaking at forums and events, presentations, stalls, meetings, and visiting traders at their premises to provide one-on-one information and advice. As a result of the COVID-19 pandemic, we pivoted to virtual presentations to ensure engagement with consumers and business could continue.

We include Queenslanders living in rural and remote areas in our engagement activities through our annual outreach program. Our officers take OFT services on the road, giving information sessions to schools, community groups and service organisations, visiting local businesses, and meeting with organisations and service providers to discuss issues within the local area.

We meet with key industry stakeholder groups on a regular basis to maintain cooperative and collaborative relationships. Examples of the groups we meet with regularly include the Real Estate Institute of Queensland, Motor Trades Association of Queensland, Australian Resident Accommodation Managers Association, Queensland Consumers Association, Indigenous Consumer Assistance Network and approved security industry associations.

We liaise extensively with consumer protection regulators in other Australian jurisdictions on current and emerging risks and opportunities. We also liaise with other Queensland regulators where matters raised fall outside our jurisdiction, or where jurisdictions intersect, to achieve the most appropriate outcomes for both consumers and traders.

Where formal arrangements are required by legislation, we enter into Memoranda of Understanding or Information Sharing Agreements with other parties. These agreements provide a framework for cooperation between the parties to facilitate information exchange, general administration and compliance activities relating to common areas of interest.

We also participate in a variety of interagency committees to share information and provide advice. These include the Queensland Building and Construction Commission Services Trade Council, Queensland Law Society Competition and Consumer Law Committee, Australasian Consumer Fraud Taskforce, Security Industry Regulators Forum, North Queensland Consumer Taskforce, Smart Service Queensland Client Board, and the Smoke Alarms Interdepartmental Committee.



Information about changes to industries regulated by the OFT is posted on our website and promoted via social media, with updates provided to sectors such as real estate, security providers, tattooists, charities and incorporated associations, as well as general information for retailers.

During 2021-22, we consulted with industry and consumers about funeral price transparency and whether additional regulation was required to ensure consumers receive easy to understand, upfront information from funeral providers. New rules were subsequently introduced requiring funeral directors to display an itemised price list on their website and at their premises, and to display the price of their least expensive package for consumers wanting a simple funeral. Consumers are also able to request a cost-itemised quote before entering into an agreement to carry out a funeral. The new rules commenced on 1 July 2022.

COVID-19 continued to impact consumers and businesses during 2021-22. We continued to work with other Australian consumer protection regulators to ensure consistent messaging was provided to both consumers and businesses particularly in relation to cancelled travel and events, scams, availability of ordered products, supply chain issues, fake charities, and frustrated contracts. In addition, we continued to provide industry specific advice to OFT regulated industries as health directions changed.

In late 2021, OFT entered into a Memorandum of Understanding (MoU) with the Residential Tenancies Authority. The proper handling of rental bond payments is a priority of both agencies and the MoU sets out a framework to work together to achieve the best outcomes.

In 2021-22 we worked to expand our engagement network to broaden and deepen the reach of consumer messages to Indigenous consumers. In addition to our usual engagement activities, we attended the National Indigenous Business Month launch, attended Black Coffee events in Toowoomba, Logan and Mackay, and participated in engagements organised with Southeast Queensland local council officers in Ipswich, Logan, Toowoomba, and the Clontarf Foundation in Goondiwindi and Townsville.

During 2021-22 we delivered presentations to a range of business groups and community associations. We provided advice about the legislative and governance obligations of incorporated associations, provided information to new licensees entering OFT regulated industries, and provided advice to Schoolies Week accommodation providers about topics such as the Australian Consumer Law, regulations around hiring security providers and rules applying to trust account monies.

In 2021-22, we progressed consultation on regulations which will provide guidance on how management committee members and officers of associations should meet their obligations under amendments to the *Associations Incorporation Act 1981* as part of the Associations Incorporation and Other Legislation Amendment Bill 2019.



MODEL PRACTICE 3 - Provide appropriate information and support to assist compliance

Supporting principles:

- clear and timely guidance and support is accessible to stakeholders and tailored to meet the needs of the target audience
- advice is consistent and, where appropriate, decisions are communicated in a manner that clearly articulates what is required to achieve compliance
- where appropriate, regulatory approaches are tailored to ensure compliance activities do not disproportionately burden particular stakeholders (e.g. small business) or require specialist advice

We provide up-to-date and timely information to consumers and traders via the Queensland Government call centre, the OFT website and social media channels, media releases, and through consumer and trader awareness campaigns and forums.

We publish guidance on the consumer protection legislation we administer to assist traders to comply. Our [website](#) also hosts a number of general and industry specific guides, checklists and advice for consumers and traders about their rights and responsibilities. All communication materials are written in plain English. We also provide fact sheets in other languages for non-English speaking clients.

We produce a series of regular newsletters including Smart Business Bulletin, Safetyzone, Security Buzz and Consumer Connection. We use these newsletters to communicate emerging issues and legislative change to target audiences. Consumers and traders can subscribe to these newsletters via our website or by contacting us by phone or email.

We do not make ad hoc decisions and commit to giving businesses certainty by assessing, investigating and enforcing the law consistently across comparable situations, including considering any national implications and the circumstances involved.

Our compliance framework includes policies, procedures and practices which ensure we target conduct, rather than a particular type of business.

Our education program recognises smaller traders may not be able to leave their businesses to attend forums and presentations, and accordingly it includes 'trader walks'. These involve fair trading officers visiting businesses at their retail premises to provide information and advice about consumer protection laws specific to their situation.

We also administer several industry specific laws and we are committed to assisting businesses operating in those sectors to comply with their regulatory obligations. We deliver targeted compliance-focused education visits which may include the provision of supporting materials or information about resources available to assist traders. The aim of these education visits is to provide an opportunity for OFT officers to discuss a trader's business practices, the requirements of relevant legislation and to provide guidance and advice to assist traders achieve compliance.



Our compliance program is planned and coordinated. Each year we develop a compliance calendar based on identified risks and analysis of the marketplace. We focus our compliance efforts on industry sectors, licensees and traders most likely to cause harm, and where consumers are most at risk. We publish our [compliance priorities](#) each year on our website so that industries are aware and can take steps to voluntarily comply.

In May 2022, a new online trust account lodgement form was released. This form asks auditors to answer 10 simple questions about matters they will have considered when conducting an audit under the *Agents Financial and Administration Act 2014* in accordance with relevant auditing standards. Along with changes to our database, this will allow us to streamline processes and improve services to regulated industries.

To assist small businesses, we developed the Queensland small business self-assessment checklist which is designed to assist businesses to understand and comply with their obligations under the Australian Consumer Law. The interactive checklist is easy to use and includes information about displaying prices, selling safe goods and services, unfair contract terms, consumer guarantees, warranties against defects, and much more.



MODEL PRACTICE 4 - Commit to continuous improvement

Supporting principles:

- regular review of the approach to regulatory activities, collaboration with stakeholders and other regulators to ensure it is appropriately risk based, leverages technological innovation and remains the best approach to achieving policy outcomes
- to the extent possible, reform of regulatory activities is prioritised on the basis of impact on stakeholders and the community
- staff have the necessary training and support to effectively, efficiently and consistently perform their duties

We are committed to the continuous improvement and development of our processes, staff and systems to improve safety and fairness for Queensland businesses and consumers.

We develop an annual training program for our staff based on needs identified in individual performance agreements and whole of organisation priorities. A suite of online training modules is available to our staff and we use external providers to provide specialist training as required. We participate in a job rotation program where an officer temporarily transfers into a different position to learn new skills and gain new knowledge to take back to their permanent role. Key staff attend forums such as those run by the Society of Consumer Affairs Professionals (SOCAP) which provide an opportunity to share best practice methodologies and to enhance relationships with other regulators.

In 2021-22 we developed a series of induction training modules directed towards our complaint management officers. All new staff with responsibility for consumer complaint handling are required to complete the modules which are also available to existing officers as a refresher.

Our procedures, guidelines, website information and call centre scripting are reviewed annually or following legislative or procedural changes to ensure they remain relevant and accurate.

We use in-field devices for staff conducting compliance operations. The devices have real-time access to up-to-date data, assisting officers to make informed decisions. Devices update data using centralised systems without officers having to return to the office.

Our officers use an online platform for collaboration and networking with consumer protection regulators across Australia. The platform provides a secure, digital environment where information can be shared amongst regulators including requests for data, matters currently under investigation or being considered for investigation and enforcement outcomes. Use of this platform reduces duplication, increases productivity, and drives consistent outcomes across the country. It also helps to ensure that we are targeting our finite resources appropriately.



We continue to enhance the digital services we make available to consumers and licensees. Clients can create a whole-of-Government account and access pre-filled online forms following an approved authentication and authorisation process. The account allows clients to go online to check the status of their service with the OFT at any time, without having to contact a Queensland Government Call Centre. This functionality saves time and decreases frustration for clients. It also reduces processing times for applications and increases the accuracy of data held by us. In 2021-22, additional services were added to the authenticated portal that allow clients to further self-service. This includes the ability to download a copy of previous receipts and upload outstanding documents to complete the requirements of an application within the digital channel. As the online system is available 24/7, small business owners who may not have time to complete their statutory obligations with us during regular office hours can undertake these activities at a time convenient to them.

In 2022-23, we will commence a whole-of-system upgrade which will deliver modern regulatory services targeted at further improving accessibility for both our clients and staff.



MODEL PRACTICE 5 - Be transparent and accountable in actions

Supporting principles:

- where appropriate, regulatory frameworks and timeframes for making regulatory decisions are published to provide certainty to stakeholders
- decisions are provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions
- indicators of regulator performance are publicly available

We deal with consumers and traders in an open and transparent manner to ensure service delivery standards and expectations are maintained. Decisions made by us can be reviewed through a range of avenues including tribunals, courts, the department's Client Complaint Management process, and the Queensland Ombudsman.

Key datasets, policies and reports are publicly available on the [Queensland Government website](#) or the [Open Data Portal](#). This includes our [Compliance and Enforcement Policy](#) (CEP) and our [Proactive Regulation of Industry and Marketplace Entities \(PRIME\)](#) program and compliance calendar.

Members of the public are able to check an entity operating in an industry regulated by the OFT is appropriately licensed or that a charity or incorporated association is registered through a free [online search](#). A register of enforceable undertakings is also available on the Queensland Government website.

We issue [media releases](#) to report the outcome of court and tribunal matters we have initiated and, where available, include comments explaining the decision and penalty made by the presiding Tribunal Member, Magistrate or Judge. We use social media channels to provide timely alerts to information and to raise awareness of where to find published details.

Target timeframes for completion are provided on our complaint forms and licence and registration application forms.

We ensure investigations are conducted as efficiently as possible to avoid uncertainty for business. We categorise investigation files by taking into consideration the complexity and priority of a matter and other factors such as the consumers affected and the extent of the misconduct. Target timeframes for completion of investigations are provided in the CEP. During lengthy investigations, we provide regular updates to the parties to keep them informed of progress.

Our officers conduct self-reviews throughout the consumer complaint management process with a supervisor or manager also reviewing their actions. These reviews allow for examination of our case management practices ensuring investigative performance is maintained, and that enforcement action is appropriate and is being applied consistently.



We provide a statement of reasons for decisions made about claims lodged against the *Agents Financial Administration Act 2014* Claim Fund, when we decline an application for an occupational licence and following any other significant administrative decision involving review rights.

We publicly report on our performance as a regulator in a number of ways including in Service Delivery Statements and departmental Annual Reports. We also produce and publish an annual [Outcomes Report](#) which provides details of our activities and achievements, statistics and case studies.

