

Office of Fair Trading

REGULATOR PERFORMANCE REPORT 2022-23

Regulation plays an important role in keeping Queenslanders safe 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. 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 ways that are consistent with 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

How our work aligns with the model practice

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. During 2022-23 more than 2,548 proactive checks were conducted on industries regulated by the OFT, identifying 411 matters requiring investigation.

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 potential 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.



How we're continuing to improve regulatory activities and business practices

- 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.
- The charitable fundraising sector has, for some time, been required to meet separate regulatory requirements within each Australian jurisdiction. To help address this issue, the Queensland government has moved to incorporate the nationwide role played by the Australian Charities and Not-for-profits Commission (ACNC) to maintain the integrity of charities.
- From July 2022, we have implemented reporting exemptions for ACNC registrants under the *Collections Act 1966*, meaning these entities generally no longer need to report to the OFT.
- On 1 May 2023, we commenced a cross-border recognition scheme, under which ACNC registrants are eligible for a fast-track fundraising authorisation through a deemed registration process.
- We have implemented a risk-based reporting framework to replace the existing mandatory audit requirements under the *Collections Act 1966*. As of 1 July 2023, revenue thresholds were introduced that require external verification of a charity's financial report only when annual revenue exceeds \$150,000, and audit only when revenue exceeds \$500,000.
- Following the recommendations of a review into national fundraising arrangements, in February 2023 the Commonwealth, State and Territory Treasurers agreed to a set of nationally consistent fundraising principles to streamline and harmonise State and Territory requirements on charitable fundraiser conduct. Queensland will develop regulations implementing the ACNC National Fundraising Principles by 1 July 2024



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

How our work aligns with the model practice

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.

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, and the Smart Service Queensland Client Board.

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.

How we're continuing to improve regulatory activities and business practices

In 2022-23, OFT commenced an initiative to connect with a wide range of First Nations stakeholders to better understand the consumer issues facing their community members. OFT has begun reaching out to identified stakeholders including local councils, community justice groups, community based financial, legal and media services, industry peak bodies and other government departments to develop a greater insight into issues faced by First Nations consumers and to begin working on solutions. This work is continuing in 2023-24. Throughout 2022-23, OFT continued to provide information and advice, conducting more than 60 education and engagement activities with First Nations people during the year, reaching more than 1,000 people including regional and remote communities.

The OFT's Outreach Program takes fair trading information and advice into rural and regional parts of the state. During 2022-23 we expanded the program, visiting more locations than usual to help mitigate the reduction in coverage during the years of the pandemic. OFT visited:

- Cooktown, Wujal Wujal and Hope Vale, Bloomfield, Rossville and Lakeland
- Woorabinda
- Miles, Roma and St George
- Gladstone
- Palm Island
- Miles, Stanthorpe, Warwick, Texas, Inglewood and Millmerran
- Scenic Rim
- Moranbah and Clermont
- Cooktown, Wujal Wujal and Hope Vale and Ayton
- Thursday Island
- Emerald and Springsure
- Cherbourg



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

How our work aligns with the model practice

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 and Security Buzz. 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. OFT provided information and advice to 1,953 business people through these trader visits during 2022-23.

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.

How we're continuing to improve regulatory activities and business practices

We regularly send out communications to stakeholders, regulated entities, and Queensland consumers to inform them about changes to legislation, their consumer rights, consultations on proposed changes, how to avoid scams and many other topics. During 2022-23, communication topics included:

- reminders to licensees that their trust account audit is due
- consultation around the real estate industry's continuing professional development
- changes to the first aid training requirements for crowd controllers
- changes to the reporting requirements for charities and incorporated associations
- information for businesses on how to identify commercial dark patterns in their business practices and why they can be problematic, and
- information for consumers on how to avoid commercial dark patterns when shopping online.

In 2022-23 we continued to participate in national education campaigns designed to raise awareness about consumer protection matters. Topics covered during this period included product safety requirements associated with Halloween, tips for online sales, and avoiding scams.



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

How our work aligns with the model practice

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.

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.

Our officers are allocated laptop devices. Staff conducting compliance operations use these in-field, providing them with real-time access to up-to-date data, assisting officers to make informed decisions. The 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.



How we're continuing to improve regulatory activities and business practices

In September 2022 we added the Commonwealth myGovID digital account as an option for clients to access secure digital services within the existing digital platform which now includes the Liquor Gaming and Fair Trading (LGFT) Client Portal. The Portal provides users a secure digital environment tailored to the services and transactions they have with OFT. It provides notifications for renewals, the ability to access past transactions, enables monitoring of the current status of interactions and, where appropriate, allows clients to complete an outstanding obligation such as making an outstanding payment or providing additional information, all within the digital channel.

In August 2022 LGFT began a four-year program of work to replace legacy licensing and compliance applications with a new modern solution aimed at delivering enhanced client service, reducing processing time, and providing greater in-field capability for staff. The consumer complaint and conciliation functionality was the first component released in July 2023.

As part of its activities, OFT receives and considers more than 20,000 consumer complaints per annum and more than 80,000 enquiries. Complaints received by the OFT are assessed for breaches of any relevant consumer protection laws, and when a possible breach for which enforcement action can be taken is identified, the matter is investigated.

However, most assessments do not identify a possible breach. In these matters OFT undertakes a conciliation process to attempt to resolve the dispute. In 2022-23 we commenced a review of our complaint management and conciliation services to identify contemporary best practice and to determine a model that will modernise and improve our effectiveness. Adoption of a new framework and a staged implementation will commence in 2023-24.



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

How our work aligns with the model practice

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 significant 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 also maintain a [prosecution action register](#) listing all prosecutions undertaken. 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 website, 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 more significant investigations, we provide regular updates to the parties to keep them informed of progress.



How we're continuing to improve regulatory activities and business practices

Our officers conduct 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.

Quality assurance reviews were also conducted on a selection of case files from 2022-23 to confirm they were progressed appropriately and in accordance with OFT's policies and procedures.

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.

