

# OFFICE OF FAIR TRADING OUTCOMES REPORT

## 2015–16

Office of Fair Trading  
[www.qld.gov.au/fairtrading](http://www.qld.gov.au/fairtrading)



Queensland  
Government





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# INTRODUCTION





## About us

### The Office of Fair Trading (OFT) is Queensland's marketplace regulator.

We administer various marketplace laws that set out the rights and responsibilities of consumers, businesses and certain licensed occupations.

The laws we administer are set out in Appendix 1, and include:

- the *Fair Trading Act 1989* and Australian Consumer Law (ACL), including product safety regulation
- specific legislation relating to a number of regulated industries including property agents, motor dealers, security providers, second hand dealers and pawnbrokers and the tattoo industry
- not-for-profit legislation relating to incorporated associations and charities.

We work closely with fair trading regulators in other states and territories, as well as federal agencies including the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC). We also work directly with local law enforcement authorities and other Queensland Government regulators.

## About this report

This report provides an overview of the OFT's strategies, functions and activities for 2015–16. It highlights where we focused our resources, and the results we achieved.

### Acronyms used in this report

ACCC	Australian Competition and Consumer Commission	EIAC	Education and Information Advisory Committee
AFAA	<i>Agents Financial Administration Act 2014</i>	FTE	Full-time equivalent
ASIC	Australian Securities and Investments Commission	FTOG	Fair Trading Operations Group
ACL	Australian Consumer Law	ICAN	Indigenous Consumer Assistance Network
ACFT	Australasian Consumer Fraud Taskforce	NICS	National Indigenous Consumer Strategy
CAANZ	Consumer Affairs Australia and New Zealand	OFT	Office of Fair Trading (Queensland)
CAF	Legislative and Governance Forum on Consumer Affairs	ORP	Office of Regulatory Policy
CDRAC	Compliance and Dispute Resolution Advisory Committee	PAMDA	<i>Property Agents and Motor Dealers Act 2000</i>
CEPS	Compliance and Enforcement Policy and Standards	PICME	Proactive Industry Compliance Management and Education
CPN	Civil penalty notice	PRAC	Policy and Research Advisory Committee
CWD	Consumers with disability	QCAT	Queensland Civil and Administrative Tribunal
DJAG	Department of Justice and Attorney-General	QPS	Queensland Police Service

## REDRESS AND COMPLAINTS

**\$6.07 M**  
redress



**14,505**  
complaints received



**14,871**  
complaints finalised



## STAFFING AND BUDGET

**225.3**  
staff



**\$30.1 M**  
Budget



## Summary

	SERVICE	NUMBER
REDRESS AND COMPLAINTS	Redress	\$6.07 million
	Complaints received	14,505
	Complaints finalised	14,871
INFORMATION AND EDUCATION	Website visitor sessions	946,152
	Call centre contacts	155,147
	Hours of phone contact	15,642
	Enquiries received	69,185
	Businesses engaged with on trader walks	1,771
	Seminars, information sessions, stalls	1,202
	Seminars, information session, stalls audiences	26,387
COMPLIANCE	Entities monitored for compliance	8,539
	Investigations completed	4,990
ENFORCEMENT ACTIONS	Warnings issued	749
	Infringements issued	466
	Administrative disciplinary actions	486
	Civil penalty notices	44
	Disciplinary proceedings (QCAT)	17
	Public naming	0
	Enforceable undertakings	14
Court actions	100	
LICENSING AND REGISTRATIONS	Occupational licence and registration certificate applications processed	20,539
	Occupational licence and registration certificate renewals processed	38,712
	Number of occupational licence and certificate holders as at 30 June 2016	86,962
	Not-for-profit applications processed	1,205
	Not-for-profit annual returns processed	21,880
STAFFING AND BUDGET	Number of not-for-profits and other organisations registered as at 30 June 2016	26,946
	Staff full-time equivalent (FTE)	225.3
	Budget	\$30.1 million

## INFORMATION AND EDUCATION

**946,152**  
website visits



**155,147**  
call centre



**15,642**  
phone hours



**69,185**  
enquiries



**1,771**  
traderwalks



**1,202**  
sessions held



**26,387**  
attendants



## COMPLIANCE AND ENFORCEMENT ACTIONS

**8,539**



entities  
monitored

**4,990**



investigations

**749**



warnings issued

**466**



infringements

**486**



administrative  
disciplinary  
actions

**44**



civil penalties

**17**



QCAT action

**14**



undertakings

**100**



court actions

## LICENSING AND REGISTRATIONS

**20,539**  
applications



**38,712**  
renewals



**86,962**  
licensed @ 30/6/16



**1,205**  
NFP applications



**21,880**  
NFP returns



**26,946**  
NFP and others  
@ 30/6/16



## Overview

### Our role

The OFT aims to foster a fair and safe Queensland marketplace.

Our work includes:

- providing information and advice to consumers, businesses and not-for-profit organisations
- conciliating consumer complaints
- investigating and taking enforcement action against businesses engaged in unfair or illegal marketplace behaviour
- undertaking a schedule of proactive compliance operations, targeting areas where consumers are most at risk
- ensuring consumer goods are safe
- licensing and monitoring the conduct of persons working in a number of occupations
- registering not-for-profit organisations and charities
- administering funeral benefit businesses and limited liability partnerships
- delivering consumer and business education, engagement and awareness activities.

The OFT's Compliance and Enforcement Policy and Standards (CEPS) sets out how we enforce the law. The CEPS covers risk management, case assessment, investigation and enforcement.

Marketplace integrity is achieved through a compliance strategy which follows an escalation model including:

- the provision of information and advice
- targeted education campaigns
- a proactive, intelligence-driven compliance program
- conciliating and investigating complaints
- enforcement where appropriate.

### Our strategy

The OFT prioritises its services and activities based on the government's statement of objectives for the community and the Department of Justice and Attorney-General (DJAG) Strategic Plan.

Specifically, under the five key areas of the DJAG Strategic Plan 2015–19:

#### Queensland is safe

- Protect consumers and business against unsafe products and unethical behaviour

#### Queensland is fair and just

- Better manage service demand on the justice system and deliver results faster
- Protect the rights and interests of vulnerable Queenslanders
- Promote marketplace fairness

## Queensland can get on with the job

- Reduce red tape
- Make it easier for Queenslanders to do business
- Ensure regulatory models encourage business growth while meeting community standards

## Queensland gets great service

- Improve service delivery models and make it easier for people to use our services
- Foster a consultative approach and engage with our stakeholders and customers
- Work collaboratively to deliver seamless and connected services to Queenslanders

## DJAG is responsive and high performing

- Ensure a high performance culture focused on organisational excellence
- Ensure a safe and rewarding workplace
- Deliver customer and business focussed ICT solutions
- Ensure financial sustainability
- Be creative problem solvers
- Ensure robust government practices
- Ensure a highly skilled, sustainable and diverse workforce that meets current and future service delivery needs
- Embed the Queensland Public Service culture and values
- Act with integrity and accountability

## Staffing and budget

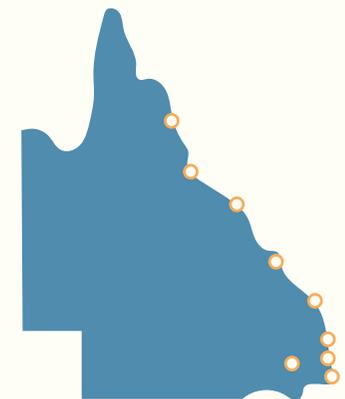
	FTEs 2015-16	BUDGET 2015-16
Office of Fair Trading	225.3	\$30,166,400
Office of the Executive Director	4.0	
Compliance and Tactical Compliance	78.5	
Business Services	63.6	
State-wide Operations	70.2	
State-wide Integration	9	
Policy support from the Office of Regulatory Policy	12.0	\$1,579,900
Executive support from the Office of the Deputy Director-General	1.75	\$422,800
<b>Total</b>	<b>239.05<sup>1</sup></b>	<b>\$32,169,100<sup>2</sup></b>

### Notes

1. FTEs do not include any department corporate services allocation.
2. Does not include One Stop Shop project funding.

The OFT operates from offices in:  
 Brisbane, Cairns, Townsville, Mackay,  
 Rockhampton, Hervey Bay, Maroochydore,  
 Toowoomba and Southport.

Our organisational structure is provided at Appendix 2.



# RESULTS





## Investigation and enforcement

A key function of the OFT is to investigate alleged breaches of fair trading laws. Investigations may commence based on complaints from consumers or businesses, information from intelligence sources, proactive compliance monitoring or public information like media reports.

### In 2015–16, the OFT:

- commenced 5,033 investigations
- finalised 4,990 investigations
- secured \$463,312 in redress for consumers via investigations
- obtained \$866,667 in redress through court-ordered compensation orders.

Where investigations substantiate a breach of legislation, the OFT has various enforcement options available. These options vary according to the legislation under which the breach occurred.

Generally, the OFT takes escalating enforcement action depending on the seriousness of the breach. Enforcement options include:

- warnings
- administrative actions
- civil penalty notices and infringement notices
- disciplinary proceedings
- enforceable undertakings
- pecuniary penalty applications
- prosecution.



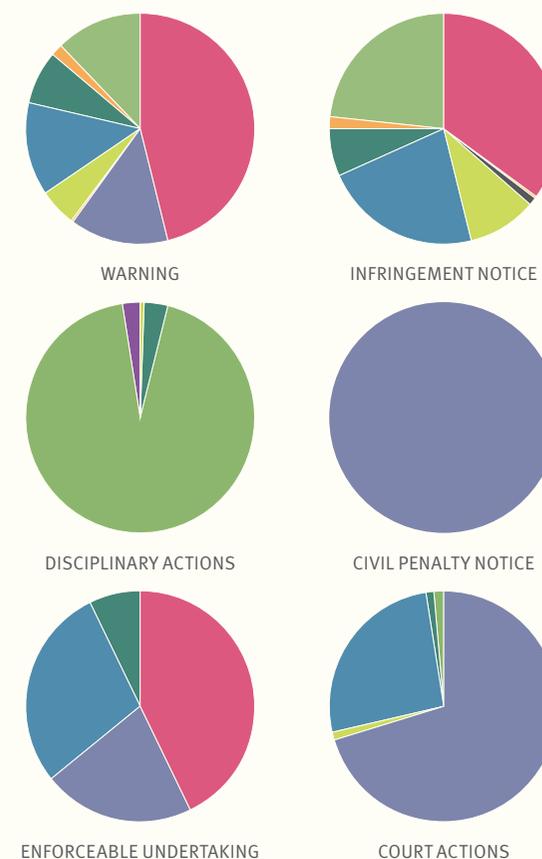
## Enforcement actions

In 2015–16 the OFT took a total of 1,840 enforcement and disciplinary actions against traders and licensees. A breakdown by Act and action type is below.

ACT	WARNING	INFRINGEMENT NOTICE	ADMINISTRATIVE DISCIPLINARY ACTIONS	CIVIL PENALTY NOTICE (CPN)	ENFORCEABLE UNDERTAKING	COURT ACTIONS
<i>Agents Financial Administration Act 2014</i>	346	164			6	
<i>Fair Trading Act 1989</i> (incorporating the Australian Consumer Law)	104			44	3	57
<i>Fair Trading Inspectors Act 2014</i>	3	1				
<i>Introduction Agents Act 2001</i>		5				
<i>Motor Dealers and Chattel Auctioneers Act 2014</i>	40	46	4			1
<i>Property Agents and Motor Dealers Act 2000</i> <sup>1</sup>	97	103			4	21
<i>Property Occupations Act 2014</i>	57	31	15		1	1
<i>Second-hand Dealers and Pawnbrokers Act 2003</i>	12	8				
<i>Security Providers Act 1993</i>	90	108	456			1
<i>Tattoo Industry Act 2013</i>			11			
<b>Total</b>	<b>749</b>	<b>466</b>	<b>486<sup>2</sup></b>	<b>44</b>	<b>14</b>	<b>81</b>

### Notes

- On 1 December 2014, the *Property Agents and Motor Dealers Act 2000* (PAMDA) was repealed and replaced with industry specific Acts. Conduct occurring on 30 November 2014 or earlier was dealt with under the former PAMDA.
  - Administrative disciplinary actions include actions taken in the course of refusing, suspending or cancelling a licence or registration. It also includes show cause notices regarding possible disciplinary action.
- \* A trader may be subject to more than one type of enforcement or disciplinary action.



## Court actions

In 2015–16, the OFT prosecuted 47 traders through the courts.

Of these:

- 26 were for wrongly accept payment (Australian Consumer Law, section 158)
- 5 were for making false or misleading representations (Australian Consumer Law, section 151)
- 5 were for unlicensed trading (real estate and motor dealing industries)
- 4 were for breaches of trust account provisions
- 7 were for other consumer law offences.

A trader may be subject to more than one type of enforcement or disciplinary action and under multiple Acts. An enforcement action may cover one breach or multiple breaches.

The vast majority of the OFT's prosecutions are heard in the Magistrates Court.

## Peter John Nulty, Mirage RV Pty Ltd and PJ & PT Nulty Pty Ltd



On 13 April 2016 in the Maroochydore Magistrates Court, Peter Nulty pleaded guilty to eight counts of accepting payment and failing to supply under the ACL.

The court heard Mr Nulty took payments from eight consumers in 2013 and 2014 for camper trailers. The consumers were given a series of delivery dates, but they were not met and refunds were not provided.

**Mr Nulty was fined \$40,000 and ordered to pay \$317,939.61 in restitution to the eight affected consumers plus court costs of \$83.90. No conviction was recorded. Mr Nulty's two companies, Mirage RV Pty Ltd and PJ and PT Nulty Pty Ltd were fined \$100,000 each and convictions were recorded.**

## Cassandra Nicole Cooney



On 1 June 2016, Cassandra Nicole Cooney pleaded guilty to six charges of wrongly accepting payment and failing to supply services within a specified time in the Southport Magistrates Court. Ms Cooney operated online businesses offering bond cleaning services to consumers in capital cities around Australia.

Between 3 March and 18 July 2013, Ms Cooney accepted payments from six consumers in Brisbane and the Gold Coast to provide end of tenancy bond cleans. Consumers were asked to pay deposits in advance.

Ms Cooney gave a commitment in each instance to have the work completed within 72 hours of the dates nominated by the consumers. However, she failed to provide any of the six consumers the promised cleaning services, breaching the businesses' own terms and conditions promoted online.

Ms Cooney did not refund affected consumers until just prior to her court appearance.

**Ms Cooney was fined \$5,000.**

## Peter and Faith Dykstra trading as Sandown Alaskan Malamutes



On 16 September 2015, Peter and Faith Dykstra were each found guilty on seven counts, and pleaded guilty to a further two counts, of engaging in misleading conduct in connection with the sale of goods.

Between October 2011 and December 2013, Mr and Mrs Dykstra sold Alaskan Malamute dogs to consumers for between \$800 and \$1000, several of whom later complained to the OFT after the dogs developed symptoms of a genetic condition known as hip dysplasia.

Mr and Mrs Dykstra further misled consumers by advertising in a local newspaper their breeding program was ‘15 years free of genetic defects’, despite being informed of numerous instances of dogs purchased from them having hip dysplasia.

The OFT investigation found Mr and Mrs Dykstra misled the consumers by claiming the condition was not genetic. They instead blamed the consumers for causing any ill health conditions by providing an incorrect diet.

**Mr Dykstra was fined \$14,000 and ordered to pay \$1,143.35 in compensation to a consumer affected by their offending. Mrs Dykstra was fined \$7,000 for the same offences under parity principles.**

The court also ordered Mr and Mrs Dykstra to issue a public apology and provide written notice to prospective buyers stating that their breeding stock was not screened for hip dysplasia.

## Adrian Campbell and Simon Gronow and International Solar Solutions Pty Ltd



On 17 July 2015, Adrian Campbell and Simon Gronow, co-directors of International Solar Solutions Pty Ltd, were jointly found guilty on five counts of wrongly accepting payment for goods and services.

The OFT investigated the practices of International Solar Solutions after receiving complaints alleging the business had failed to supply and install solar power systems purchased by consumers.

Between August 2013 and May 2014, Mr Campbell and Mr Gronow, as directors of International Solar Solutions, accepted total payments of \$36,710 from five consumers to supply and install the systems, but failed to do so for five months, despite repeated requests from affected consumers.

In sentencing, the court considered Mr Campbell and Mr Gronow had made no attempt to refund any money or cooperate with the OFT’s investigation. The defendants did not appear in court and the matter was dealt with in their absence.

**Mr Campbell and Mr Gronow were each fined \$10,000 with two months to pay or 100 days imprisonment in default and ordered to pay a total of \$18,355 in compensation to the affected consumers. International Solar Solutions was fined \$20,000. Convictions were recorded against all defendants.**

## Court enforceable undertakings

In 2015–16, the OFT entered into 14 enforceable undertakings with traders.

An enforceable undertaking is a legally binding agreement that the OFT enters into with a business or individual.

Generally, undertakings include agreements from the traders to:

- remedy the mischief
- accept responsibility for their actions
- establish or review and improve their trade practices compliance programs and culture
- provide redress to affected consumers.

If a trader fails to comply with any condition of an undertaking, or reoffends, the court can order them to change their activities and pay:

- compensation
- a fine
- a security bond.

Enforceable undertakings are listed on the OFT website.

## Wrongly accepting payment for goods

**Justin James Hollow trading as Lakes Photography and Design**



Between April 2013 and July 2015, Justin Hollow accepted payment from nine consumers to photograph and/or video their weddings and subsequently supply related products.

Mr Hollow failed to supply all of the goods within the times outlined in his terms and conditions, nor within a reasonable amount of time. Mr Hollow was unable to offer a reasonable explanation as to why he did not supply all products paid for by the consumers.

Mr Hollow entered into a court enforceable undertaking on 20 June 2016 to improve business processes including amending terms and conditions to accurately define expected time frames for delivery of goods and establishing a complaint handling process.

**Mr Hollow also undertook to supply the consumers with all outstanding products and paid a \$2000 penalty.**



## Infringement notices and civil penalty notices

In 2015–16, the OFT issued 466 infringement notices and 44 civil penalty notices.

### Woolworths Ltd



In November 2015, Woolworths Ltd was issued a \$102,000 civil penalty notice for making misleading representations with voucher advertising.

In February 2015, the OFT identified a voucher which was circulated by mailbox drop to homes within the local area of 14 participating supermarkets, situated in and around Brisbane.

The voucher stated '20% off all your meat purchases' however, the discount only applied to fresh meat purchased from the Woolworths meat department and not to meat from the delicatessen, nor frozen or other types of meat.

Consumers purchasing meat, other than from the fresh meat counter, were not automatically given the discount even though the voucher had no conditions on it excluding such purchases.

The OFT investigated and found the voucher did not provide any terms and conditions in relation to the offer. Nor did it clarify what type of meat qualified for the discount, making it reasonable to assume that it applied to all types for sale within the store.

Following OFT intervention, Woolworths changed the terms and conditions of the voucher for subsequent promotions to include print stating 'must be spent in one transaction on purchases from the Meat Department'.

### XMR Holdings Pty Ltd



In August 2015, the OFT issued XMR Holdings Pty Ltd with a \$10,200 civil penalty notice for making a misleading representation regarding the sale of land.

The OFT received a complaint that a licensed real estate agent had advertised a property for sale without the property owner's authority. During the investigation the OFT learned details about the property had been obtained from the appointed real estate agent's website and then placed it on XMR Holding's website.

XMR Holdings removed the advertisement from its company's website and paid the civil penalty notice.



## Proactive compliance

The OFT conducts a Proactive Industry Compliance Management and Education program (PICME) annually.

The PICME program targets high-risk industries and areas where consumers are most likely to suffer detriment. Traders who have previously come to the attention of the OFT (via, for example, consumer complaints, media reports, intelligence sources, or previous compliance activity) are often included as spot check targets in the PICME program's proactive compliance operations.

The PICME program includes:

- scheduled operations
- non-scheduled operations and non-scheduled spot checks
- product safety operations.

### P I C M E P R O G R A M



## Operation outcomes

During an operation, a predetermined number of spot checks are completed by fair trading officers across Queensland. When a spot check is completed, the outcome will be one of the following:

- no breaches detected
- breaches rectified immediately (product safety related issues)
- referred for further investigation.

An investigation can result in a number of outcomes. For PICME reporting purposes these are broken down into:

- no breach, meaning no evidence of a breach, insufficient evidence of a breach
- 'other', meaning a non-enforcement outcome. For example a compliance advice letter or the investigation was referred to another Government agency
- enforcement actions, which can include:
  - a warning
  - an infringement notice
  - a civil penalty notice
  - a public naming
  - an enforceable undertaking
  - a court prosecution, where the investigation is referred for court or tribunal action.

## PICME scheduled operations

OPERATION	SPOT CHECKS		INVESTIGATION OUTCOMES								
	NO BREACH DETECTED	SENT FOR INVESTIGATION	NO BREACH	OTHER	ENFORCEMENT ACTIONS						
					WARNING ISSUED	INFRINGEMENTS ISSUED	CIVIL PENALTY NOTICE (CPN)	PUBLIC NAMING	ENFORCEABLE UNDERTAKINGS	COURT ACTIONS	
<b>4QTRUST15/16</b> —Trust accounting practices of real estate agents and resident letting agents	51	50	2	11	20	11				2	1
<b>AGENT15/16</b> —focus on real estate agents advertising online ‘offers over’ and representations made	63	12		3	6	3					
<b>COLLECTIONS16</b> —Ensuring appropriate authority to collect on the street and identification	6	4		2	2						
<b>DISCOUNT15/16</b> —ACL focus on was/now pricing including scanning and product placement	88	21	1	11	5		1				
<b>4QDISCOUNT15/16</b> —follow up to DISCOUNT15/16, particularly at other places of business	84	21	6	8	6						
<b>LAYBY15/16</b> —ensure compliance with layby provisions of ACL	52	29		23	3		3				
<b>LOCKSMITHS15/16</b> —check persons providing locksmith/total household services including those advertising in non-traditional media are appropriately licensed	34	6		2	3	1					
<b>MD15/16ED</b> —Education visits on licensees and agents on new legislation	63	3		1		1					
<b>REA15/16ED</b> —Education visits on licensees focusing on ‘offers over’, auction prices (cooling off after passed in), no prices	68	4			2	1					
<b>RLA15/16</b> —focussed on previously non-compliant agents for trust account breaches	46	22	3	6	8	3					
<b>RLA15/16ED</b> —Education visits on new licensees and agents	60	3		1	1	1					
<b>RLASCHOOLIES15</b> —RLAs managing high rise apartments used by Schoolies	9	1		1							
<b>SAPPHIRE15/16</b> —Online traders claiming affiliation to industry associations or claim they sponsor community groups	35	5	1	3	1						
<b>SCHOOLIES15</b> —Check security officers to ensure they are licensed, focusing on Schoolies entertainment	70	12	1	2	7	2					
<b>SECONDHAND15/16</b> —New dealers, lapsed licenses and/or previously non-compliant	37	34	1	21	8	4					
<b>SIMAZINEMD15/16</b> —backyard motor dealers	23	14	2	9	2	1					
<b>Total operations (16)</b>	<b>789</b>	<b>241</b>	<b>17</b>	<b>104</b>	<b>74</b>	<b>28</b>	<b>4</b>	<b>0</b>	<b>2</b>	<b>1</b>	

## SPOT CHECKS



789

NO BREACH DETECTED



241

SENT FOR INVESTIGATION

## Notes:

- Multiple enforcement actions can be taken against one entity.
- Not all matters referred for investigation during a financial year may have been finalised in that financial year.

## Operation 4QTRUST15/16



Between April and June 2016, OFT officers across Queensland conducted 101 checks on 219 real estate agents and resident letting agents (including corporations) operating trust accounts, focusing on previously non-compliant entities and entities not recently subject of an OFT compliance check.

A 50% non-compliance rate resulted in 50 investigations for breaches of the *Property Occupations Act 2014* and *Agents Financial Administration Act 2014*. Issues identified related to disbursement of trust monies, appointments to act as a property agent, excess commissions, failure to lodge audit reports on time and unregistered salespeople.

OFT officers issued 20 warnings and 11 infringement notices. The OFT also entered into court enforceable undertakings with two real estate agents to improve their business practices and prosecuted a real estate agent director and corporation for wrongful conversion of trust money.

## Operations DISCOUNT15/16 and 4QDISCOUNT15/16



In 2014, the OFT conducted a compliance operation (ACLADVERT14) reviewing businesses advertising reduced prices or goods 'on sale'. The OFT required the businesses substantiate their claims of goods sold at higher prices prior to the discounted price.

In November and December 2015, the OFT revisited the traders to ensure continuing compliance.

Issues regarding discounts, such as was/now pricing claims, and product placement in relation to advertised prices were examined.

This included placement of large sized products next to price signage for smaller sized products.

These operations checked over 200 stores and resulted in 11 warnings and one civil penalty notice for \$10,800 being issued.

## Operation SAPPHERE15/16



In early 2016, OFT officers checked 40 businesses which had made representations of affiliations, for example to industry associations, or which claimed sponsorship of community groups or sporting clubs.

Under the ACL it is an offence to make a false or misleading representation regarding sponsorship, approval or affiliation.

Compliance by the businesses was high with only five organisations requiring further investigation into their claims. One warning was issued to a motor dealer whose premises had displayed sign indicating the motor dealer was a member of an industry association when it was not a member.

## Operation LOCKSMITHS15/16



In March 2016, officers across the state checked 40 businesses who advertised they were providing locksmith services. Officers identified targets for this operation through advertisements in local publications and on social media channels.

Under the *Security Providers Act 1993* it is an offence to provide security services, including general functions of a locksmith, for reward, without holding the appropriate licence.

Further investigation was conducted on six businesses with three warnings and one infringement notice issued for unlicensed activity.

## Non-scheduled spot checks

Non-scheduled compliance checks are generally conducted where the OFT believes there may be evidence to suggest non-compliance. Spot checks can occur following a complaint received or where the OFT becomes aware of emerging issues or heightened public interest in a particular issue or industry.

Some festivals and major events are also visited unannounced as part of our non-scheduled program to check compliance across all OFT legislation. The provisions checked vary depending on the event. (See Appendix 1 for a list of OFT administered legislation).

LEGISLATION	SPOT CHECKS		INVESTIGATION OUTCOMES							
	NO BREACH DETECTED	SENT FOR INVESTIGATION	NO BREACH	OTHER	ENFORCEMENT ACTIONS					
					WARNING ISSUED	INFRINGEMENTS ISSUED	CIVIL PENALTY NOTICE (CPN)	PUBLIC NAMING	ENFORCEABLE UNDERTAKINGS	COURT ACTIONS
ACL (not related to specific national projects)	21	11		7	2	2				
Auctioneers	2									
Resident letting agents	3	1								1
Real estate agents	77	35	3	10	17	4				
Motor dealers	28	23	1	11	4	4				
Second hand dealers*	14	5		2	2	1				
Security providers**	33	15	1	6	4	4				
Festivals	29	6		3	2	1				
<b>Total</b>	<b>207</b>	<b>96</b>	<b>5</b>	<b>39</b>	<b>31</b>	<b>16</b>				<b>1</b>

### Notes

- Multiple enforcement actions can be taken against one entity.
- \* The Queensland Police Service also undertakes compliance spot checks under the *Second-hand Dealers and Pawnbrokers Act 2003*.  
\*\* The Queensland Police Service and Office of Liquor and Gaming Regulation also undertake compliance spot checks under the *Security Providers Act 1993*. The statistics listed in this report relate only to those undertaken by the OFT as part of non-scheduled spot checks.
- Not all matters referred for investigation during a financial year may have been finalised in that financial year.

## Unlicensed resident letting agent



OFT officers conducted a non-scheduled spot check of a resident letting agent premises in Gladstone in June 2016 and commenced an investigation after finding an unlicensed person in charge.

When the officers attended the premises, Michelle Ann Breytenbach was asked to present her real estate salesperson certificate. Ms Breytenbach supplied OFT inspectors with a real estate salesperson certificate showing an expiry date of 1 August 2016. The expiry date was checked against OFT's licensing database which showed her true licence expiry date of 1 August 2015.

The OFT prosecuted Ms Breytenbach in the Gladstone Magistrates Court. The Court fined Ms Breytenbach \$4,207 and disqualified her from working in the real estate industry for three years.

## SPOT CHECKS



# 207

NO BREACH DETECTED



# 96

SENT FOR INVESTIGATION

## Redress

The OFT obtains redress for consumers by:

- conciliating complaints between consumers and traders
- paying claims from the claim fund to reimburse consumers who have suffered financial loss as a result of certain illegal actions by real estate agents, auctioneers, motor dealers and debt collectors
- negotiating refunds, or payments to community organisations where individual consumers can't be identified, as part of enforceable undertakings
- securing court-ordered compensation as part of the prosecution of traders.

Redress is calculated as a dollar value, including the value of refunds, repairs, replacements, repeat services and in-kind compensation.

In 2015–16, the OFT achieved \$6.07M in redress for consumers.

Conciliation	4,183,995
Investigations	463,312
Claims paid to consumers	563,695
Court-ordered compensation orders	866,667



### Conciliation of complaints

In 2015–16, the OFT received 14,505 complaints. Of these, 12,926 were referred for conciliation.

The OFT finalised 14,871 complaints in 2015–16, including 13,168 by conciliation. Of the complaints conciliated, 91% were resolved satisfactorily.

In total, \$4,183,995.50 in redress was achieved by the OFT through conciliation.

### Rusty car

A consumer bought a demonstrator vehicle from a new car dealership. Rust spots appeared on the vehicle within a few months which were repaired by the dealer. Rust continued to appear, and was repaired over the course of 12 months. The consumer approached the dealer and manufacturer for a replacement vehicle without success.



**The OFT conciliated a replacement vehicle valued over \$39,000.**

### Fading carpet

A consumer had carpet installed in their home and the trader guaranteed it would not fade. Within three years, the consumer noticed the carpet was fading and approached the trader for replacement. The trader offered to replace a portion of the carpet with another product as the original product was discontinued. The consumer was unhappy with the offer and complained to the OFT.



**Through conciliation, the OFT obtained a full replacement of the carpet with a suitable and comparable product.**

### Layby change of mind

A consumer placed a diamond ring on layby at a jeweller. The consumer made payments totalling \$6,800 before changing their mind about purchasing the ring. The consumer requested a refund of the payments made but the trader refused to refund the money and offered an in-store credit.



**After the OFT's involvement, the trader gave the consumer a refund minus a termination fee.**

## Door panels

A consumer bought \$9,500 worth of panoramic, folding patio doors containing double-glazed glass panels from a door specialist. After two years, the glass panels developed a residue inside the double-glazing. The consumer brought the issue to the attention of the trader, but the trader claimed the glass was outside its warranty period and would not assist. The consumer sought advice from a glass specialist who advised the issue was not a fault with the glass, but caused by heating of plastic components and fittings within the door.

**After the OFT's intervention, the trader replaced the glass panels.**



## Court ordered compensation

In certain circumstances, as part of a prosecution of a trader, the OFT can request a court order a trader to pay compensation to consumers who have been left out-of-pocket by the trader's offending.

In 2015–16 the OFT secured court-ordered compensation orders totalling \$866,667.90.

## Wade Charles Hill trading as Xtreme Trailers and Truck Bodies



On 2 December 2015, Wade Charles Hill was ordered to pay over \$425,000 in fines and compensation by the Beaudesert Magistrates Court.

Mr Hill was found guilty of 12 counts of accepting payment and failing to supply goods to consumers under the ACL. Between 20 November 2013 and 20 August 2015 Mr Hill accepted payment from 12 customers for custom built trailers, vans, or horse floats ranging in price from \$15,000 up to \$64,000. In each instance consumers were advised their trailer would be completed within 8 to 12 weeks if they paid the full purchase price in advance, but did not specify an actual delivery date.

Consumers were also enticed with assurances that by paying in advance Mr Hill would add extras to their purchase for no charge or at a discounted price.

Mr Hill did not appear in court and the matter was heard in his absence.

In sentencing, the court considered Mr Hill's actions to be extremely serious as he clearly had no intention of fulfilling his obligations.

**Mr Hill was fined \$75,000, ordered to pay \$350,110 in compensation to affected customers, and a conviction was recorded.**



*\$866,667.90 secured from court-ordered compensation orders*

## Patrick Vincent Fitzgerald sole director of P Fitzgerald Pty Ltd



On 21 August 2015, Patrick Vincent Fitzgerald and P Fitzgerald Pty Ltd were ordered to pay over \$129,000 in fines and restitution by the Cairns Magistrates Court.

P Fitzgerald Pty Ltd, of which Mr Fitzgerald was sole director, pleaded guilty to 32 counts of misusing trust money, 12 counts of retaining a reward it was not entitled to and 30 counts of making false representations about property. Mr Fitzgerald pleaded guilty to 74 counts of failing to ensure the corporation complied with the law.

The court heard Mr Fitzgerald, while on-site manager of Club Tropical Resort in Port Douglas between September 2012 and December 2013, retained income which rightfully should have been paid to owners. This included letting property and failing to declare stays to owners, charging owners twice for marketing, retaining monies for credit card expenses on all expenses, not just those paid by credit cards, and retaining credit card fees charged over and above cost.

The overcharged marketing expenses and credit card fees were retained by Mr Fitzgerald for his own personal use.

In sentencing, the court considered Mr Fitzgerald's pattern of offending and blatant disregard for his legislative and fiduciary responsibilities.

**Mr Fitzgerald was fined \$12,500, ordered to pay \$33,287.76 in compensation to owners and permanently disqualified from holding a property agent licence or certificate. P Fitzgerald Pty Ltd was fined \$50,000, ordered to pay \$33,287.76 in compensation to owners and permanently disqualified from holding a property agent licence.**

**A conviction was recorded against both Mr Fitzgerald and the corporation.**

## Claims

Established under the *Agents Financial Administration Act 2014* (AFAA), the claim fund is used to reimburse consumers who suffer financial loss as a result of certain breaches of industry laws by agents, motor dealers, auctioneers and debt collectors.

Under AFAA, real estate agents, motor dealers, auctioneers and debt collectors must put deposits, rent and purchase money received for transactions into a trust account. Approximately 8,000 trust accounts are held across 15 financial institutions in Queensland.

Major breaches leading to claims include:

- misappropriating trust monies
- false and misleading representations about real estate and motor vehicles
- failure to guarantee clear title of motor vehicles
- real estate agents obtaining a beneficial interest in real property
- motor dealers improperly dealing with deposits during a cooling off period.

In 2015–16, \$563,695 was paid from the claim fund to 88 consumers who had been the victim of dishonest acts by agents and motor dealers. A further \$261,579 was used to fund receiverships over trust properties and a special investigator.

Under the AFAA all amounts paid from the claim fund may be recovered from the offending trader. While every effort is made to recover these monies, agents and dealers often lack the financial capacity to repay the debt and recovery rates are relatively low. In 2015–16, \$139,359 was recovered.

## Product safety

Legislative provisions to ensure the safety of consumer goods and products are contained within the ACL, administered jointly by the ACCC and state and territory fair trading agencies. The OFT is responsible for product safety matters in Queensland. Each year, around 40,000 hospital admissions and 200,000 emergency department presentations relate to injury. Many of these involve everyday consumer products.

As a result of investigations undertaken in 2015–16:

- 4 civil penalty notices worth a total of \$32,400 were issued, for breaches of safety and information standards
- 6 debt recovery orders worth a total of \$3,300 were issued, to recoup testing costs
- 33 warnings were issued, for minor breaches of safety standards
- 1 enforceable undertaking was entered into.

In 2015–16, the OFT also conducted 842 product safety spot checks state-wide, including:

- 693 as part of compliance operations
- 149 as targeted non-scheduled inspections.

### Scheduled product safety operations

The following product safety-focused proactive compliance operations were undertaken in 2015–16.

OPERATION	SPOT CHECKS		INVESTIGATION OUTCOMES							
	NO BREACH DETECTED	SENT FOR INVESTIGATION	NO BREACH	OTHER	ENFORCEMENT ACTIONS					
					PRODUCT WITHDRAWN BY TRADER	WARNING ISSUED	CIVIL PENALTY NOTICE (CPN)	PUBLIC NAMING	ENFORCEABLE UNDERTAKINGS	COURT ACTIONS
EKKA15—show bag safety checks and compliance audits of stall holders at the Brisbane Ekka.	11	1				1				
HIREINDUSTRY15/16—increase compliance in the consumer goods hire industry and to reduce the supply of non-compliant unsafe products to the marketplace	27									
IMPORTER15/16—increase compliance in the importer industry and to reduce the supply of non-compliant unsafe products to the marketplace.	10	1	1							
MARKETS15/16—focus on compliance of goods sold at markets to reduce the supply of unsafe products.	39	15	2	4		8	1			
ONLINE15/16—increase compliance in the retail sector to reduce the supply of non-compliant unsafe products to the marketplace.	89	15		7	1	2	3		1	
SAFECHRISTMAS15—417 compliance checks conducted State-wide before Christmas 2014, targeting the retail and import industries to reduce the supply of non-compliant unsafe products to the marketplace.	390	27	8	2		17				
STANDARDS16—focus on compliance in the retail sector to reduce the supply of unsafe products to the marketplace.	68									
<b>Total (7)</b>	<b>634</b>	<b>59</b>	<b>11</b>	<b>13</b>	<b>1</b>	<b>28</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>0</b>

Notes:

1. Multiple enforcement actions can be taken against one entity.
2. Not all matters referred for investigation during a financial year may have been finalised in that financial year.

## Occupational licensing

The OFT protects the community and marketplace integrity by making sure that only suitable persons are licensed to work in certain occupations.

In 2015–16 the OFT processed 20,539 new licence and certificate applications and 38,712 renewals.

ACT	NEW LICENCE AND CERTIFICATE APPLICATIONS	LICENCE AND CERTIFICATE RENEWALS
<i>Property Occupations Act 2014</i>	8,914	20,375
<i>Motor Dealers and Chattel Auctioneers Act 2014</i>	1,460	4,430
<i>Debt Collectors (Field Agents and Collection Agents) Act 2014</i>	122	309
<i>Security Providers Act 1993</i>	8,914	12,600
<i>Second-hand Dealers and Pawnbrokers Act 2003</i>	262	736
<i>Tattoo Parlours Act 2013</i>	833	200
<i>Introduction Agents Act 2001</i>	7	8
<i>Tourism Services Act 2003</i>	27	54
<b>Total</b>	<b>20,539</b>	<b>38,712</b>



**20,539**  
Applications



**38,712**  
Renewals



**86,962**  
Entities licensed

As at 30 June 2016 the following number of entities were licensed to perform the OFT-licensed occupations.

OCCUPATIONAL FUNCTION	NUMBER LICENSED OR REGISTERED		
<b>Security industry</b>	29,348	Security provider—Class 1 (unrestricted)	23,911
		Security provider—Class 1 (restricted)	14
		Security provider—Class 2	4,021
		Security firm	1,402
<b>Real estate industry</b>	43,159	Real estate (individual)	13,332
		Resident letting agent (individual)	1876
		Real estate salesperson	20,657
		Real estate (corporation)	6,297
<b>Motor industry</b>	8,052	Resident letting agent (corporation)	997
		Motor dealer (individual)	3,583
		Motor salesperson	3,122
		Motor dealer (corporation)	1,347
<b>Auctioneering</b>	3,663	Auctioneer (individual)	1,434
		Chattel auctioneer (individual)	1,219
		Auctioneer (corporation)	543
		Chattel auctioneer (corporation)	467
<b>Debt collection</b>	586	Field agent (individual)	276
		Field sub-agent	183
		Field agent (corporation)	127
<b>Tattoo industry</b>	662	Tattooist	459
		Tattoo parlour operator	199
		Visiting Tattoo Permit	4
<b>Second-hand dealing and pawnbroking</b>	1,358	Second-hand dealer	1,163
		Pawnbroker	6
		Second-hand dealer and pawnbroker	189
<b>Introduction agent</b>	<b>18</b>		
<b>Inbound tour operator</b>	<b>116</b>		
<b>Total</b>	<b>86,962</b>		

## Administrative and disciplinary action against occupational licensees—suspensions and cancellations

### *Property Occupations Act 2014* licences suspended

LICENCE SUSPENSION REASON	NUMBER
Fail to supply audit report	8
<b>Total</b>	<b>8</b>

### *Security Providers Act 1993* licences suspended

LICENCE SUSPENSION REASON	NUMBER
Administration of justice/public authority	3
Assault	25
Breaches of the peace	2
Drugs related offences	31
Endangering life or health	9
Homicide	2
Morality/sexual offences	14
Offences against liberty	5
Public interest	1
Stealing and like offences	19
Weapons offences	4
<b>Total</b>	<b>115</b>

### *Motor Dealers and Chattel Auctioneers Act 2014* licences cancelled

LICENCE CANCELLATION REASON	NUMBER
Assault	1
Bankruptcy	3
Participant in a criminal organisation	1
<b>Total</b>	<b>5</b>

### *Property Occupations Act 2014* licences cancelled

LICENCE CANCELLATION REASON	NUMBER
Assault	2
Bankruptcy	12
Corporation deregistered	6
Morality/sexual offences	1
Stealing and like offences	1
<b>Total</b>	<b>22</b>

### *Security Providers Act 1993* licences cancelled

LICENCE CANCELLATION REASON	NUMBER
Assault	3
Drugs related offence	4
Endangering life or health	2
Failure to supply fingerprints	2
Mandatory association membership	7
Morality/sexual offences	2
Offences against liberty	1
Participant in a criminal organisation	2
Public interest	13
Stealing and like offences	4
Triennial training	314
Weapons offences	1
<b>Total</b>	<b>355</b>

#### Notes

1. An individual or company may have their licence suspended or cancelled for more than one activity.
2. An individual or company licence may remain suspended across reporting periods. For example, until a matter is determined by a court.
3. Under some circumstances an individual or company licence may be cancelled without having been suspended. For example, due to an automatic disqualifying offence.

### Decision making and disciplinary action

The OFT receives applications for licences and registration status under the legislation it administers. Following an investigation of available evidence, consideration is given as to whether an entity is suitable to hold a licence or registration status. Applications may be granted or refused.

When the OFT receives adverse information on any of its existing licensed or registered entities that may render the entity ineligible to retain a licence or continue being registered, the OFT will investigate the matter. Where there is sufficient evidence we will commence action to cancel the licence or registration of the entity concerned. Information can be received from a variety of sources, including the Queensland Police Service (QPS), other regulatory agencies or members of the public.

The majority of decisions by the OFT are subject to review by QCAT. The OFT appears in QCAT to defend any decision made.

In 2015–16, a total of 486 administrative disciplinary actions were taken by the OFT against licensees, with 17 being reviewed by QCAT. Administrative disciplinary actions include all actions taken in the course of refusing, suspending or cancelling a licence or registration. It also includes show cause notices regarding possible disciplinary action.



### Teresa Janet Schouten trading as Janet Schouten Real Estate



The OFT received complaints from two consumers in 2013 alleging a Teresa Schouten had breached the former *Property Agents and Motor Dealers Act 2000*. The complainants claimed Ms Schouten provided fake documents in a QCAT hearing about tenant bond disputes.

The OFT investigated the claims and found evidence Ms Schouten had misappropriated bond monies received from two tenants, paying them into her own general account instead of the business trust account. Ms Schouten also falsified invoices and gave false evidence in a QCAT proceeding for her own financial gain.

The complainants lodged, and had approved, claims against the claim fund set up under the AFAA. The agent subsequently reimbursed the claim fund.

**QCAT fined Ms Schouten \$9,900 for the improper use of a trust account and falsifying evidence and disqualified her from holding any form of real estate licence or certificate for seven years. Ms Schouten subsequently lodged an appeal and the disqualification period was reduced to three and a half years.**

## Not-for-profit and other registrations

The OFT helps community groups and not-for-profit organisations by registering incorporated associations, charities and cooperatives.

ACT	NEW REGISTRATION APPLICATIONS	ANNUAL RETURNS
<i>Associations Incorporation Act 1981</i>	993	18,091
<i>Collections Act 1966</i>	206	3,680
<i>Cooperatives Act 1997</i>	6	109
<b>Total</b>	<b>1,205</b>	<b>21,880</b>

As at 30 June 2016, the following number of organisations were registered.

ORGANISATION TYPE	NUMBER REGISTERED
Incorporated associations	22,074
Charities and community purpose	4,380
Cooperatives	181
Limited liability partnerships	311
<b>Total</b>	<b>26,946</b>

The majority of decisions by the OFT are subject to review by QCAT. The OFT appears in QCAT to defend any decision made. In 2015–16, two administrative decisions were reviewed by QCAT on not-for-profit matters.



## Education and advice to consumers and industry

A key part of the OFT's role is to inform and educate consumers, businesses and licensees about their rights and responsibilities under fair trading laws. A well-informed marketplace contributes to fair competition, and better outcomes for both consumers and traders.

The OFT uses a wide variety of channels and mechanisms to inform the marketplace. These include our:

- website at [www.qld.gov.au/fairtrading](http://www.qld.gov.au/fairtrading)
- call centre on 13 QGOV (13 74 68)
- visits to traders at their premises
- community information sessions and school visits
- educational visits by our inspectors, as part of our PICME program
- outreach program, taking fair trading information and advice to regional and remote Queensland
- social media channels including Facebook, Twitter and YouTube
- statements to the media and industry organisations
- electronic newsletters.

In 2015–16 the OFT:

- had over 946,000 visitors to the fair trading website who viewed over 3.1 million individual pages

- visited 1,771 traders to provide one-on-one education and advice
- gave 1,202 presentations and information sessions attended by 26,387 people including:
  - 267 presentations that were attended by over 9,322 people including youth, seniors, Aboriginal and Torres Strait Islander consumers and non-English speaking background consumers
  - 101 trader presentations attended by approximately 2,836 business and industry attendees
  - a State-wide back to school program with visits to 40 schools, speaking with more than 2,413 students on their refund rights and online shopping
- had over 155,000 phone interactions via the Queensland Government call centre, involving nearly 15,600 hours of direct telephone talk time
- responded to 69,185 enquiries received seeking information or advice
- produced 12 electronic newsletters (six editions of Smart Business Bulletin, four editions of SafetyZone and two editions of Security Buzz) for around 23,000 subscribers
- continued to engage with consumers and traders through our Facebook, Twitter and YouTube accounts.



## Product safety

The OFT undertakes a variety of product safety educational activities. In 2015–16, these included:

- distributing over 4,000 of our ‘7 easy steps’ brochures to educate consumers about the safe use of consumer products including prams, cots, bunk beds, trampolines, pool toys, treadmills and furniture stability
- compliance audits to educate traders about the ACL requirements to meet product safety standards and how to develop compliance plans
- improving public awareness of quad bike dangers and how to use them safely
- issuing a safety notice under section 129 of the ACL warning about hoverboards
- issuing warnings via social media and media releases about the safe use of hoverboards and how to identify a non-compliant battery charger
- releasing a new safety awareness film to educate consumer and traders about the dangers of ethanol burners.

## Buy Smart Competition

The *Buy Smart* Competition has been run by the OFT annually since 2002. The competition is designed to enhance financial literacy and understanding of consumer issues by getting students to research a consumer issue, then develop a way to share their new-found knowledge with their peers.

Students were highly inventive with their entries with those received, including board games, picture books, websites and phone applications, scale models and even songs. In 2015, 2,803 students from across Queensland participated in the competition, resulting in 627 entries.

The winning entries came from:

- Ashgrove State School
- Aspley State High School
- Bundaberg State High School
- Citipointe Christian College, Carindale
- Dalby Christian College
- Georgetown State School
- Loreto College Coorparoo
- James Nash State High School, Gympie
- Sheldon College
- Thornlands State School
- Wavell State High School
- Wellers Hill State School, Tarragindi
- Wrongary State School.



## Outreach program

The OFT aims to deliver a high standard of service to all Queenslanders. Our outreach program takes our message into rural and regional parts of the State where we:

- hold information sessions for consumers, associations and businesses
- visit schools and provide presentations to classes about being smart consumers
- visit retailers to provide one-on-one information and advice about the ACL
- undertake compliance checks on industry sectors we regulate and licence
- take complaints from consumers.

In 2015–16, the OFT conducted seven outreaches to:

- Cherbourg—Cherbourg, Murgon, Wondai, Kingaroy
- Gregory—Longreach, Blackall, Tambo, Augathella, Charleville, Cooladdi, Quilpie, Windorah, Jundah, Stonehenge
- Maranoa—Tara, Moonie, Westmar, St George, Surat, Roma, Miles
- Cooktown—Cooktown, Hopevale, Wujal Wujal, Mt Carbine, Lakeland
- North Burnett—Rosedale, Childers, Gin Gin, Moore Park, Bargara
- Mt Isa—Mt Isa, Boulia, Winton, McKinlay, Cloncurry
- Cape York—Weipa, Napranum, Pormpuraww, Kowanyama.

## *Do not knock* informed communities

The *Do not knock* informed communities program is designed to deter unscrupulous door-to-door traders from Indigenous communities, and empower Indigenous consumers to enforce their consumer rights.

The program involves the installation of roadside signage at entrance points to discrete Indigenous communities, reminding door-to-door traders to follow consumer law rules and warning them that consumers are informed of their rights and will report unlawful behaviour.

The program is a joint initiative of local Aboriginal Shire Councils, the OFT, the ACCC and not-for-profit consumer organisations such as the Indigenous Consumer Assistance Network (ICAN).

The first community partnership was launched in Wujal Wujal on 21 April 2016.





## Fair trading policy achievements

The Office of Regulatory Policy's (ORP) Fair Trading Policy unit supports the Attorney-General by developing consumer protection policy advice and legislation, including the maintenance of the regulatory framework.

In 2015–16, ORP completed policy and legislative work resulting in the amendments aligning directors' liability provisions of the Fair Trading Act 1989 with broader Queensland and national policy. The amendments provide business with a more consistent approach to vicarious liability of directors under Queensland legislation.

In 2015–16, ORP also:

- provided technical assistance and support to the Queensland Parliament's Legal Affairs and Community Safety Committee in relation to its inquiry into: Lemon laws—An inquiry into consumer protections and remedies for new car buyers
- worked collaboratively with Commonwealth, state and territory consumer policy agencies to initiate the review of the ACL, with an issues paper being released for public consultation on 31 March 2016
- undertook policy analysis and coordination to support the Queensland Government vote on Commonwealth Government proposals to make amendments to the ACL in relation to country of origin labelling and free-range egg labelling
- supported and participated in the Petrol Price Summit convened on 2 March 2016 by the Minister for Main Roads, Road Safety and Minister for Energy, Biofuels and Water Supply, which was designed to bring together representatives of industry, consumer and motoring groups to explore the reasons for high petrol prices in Queensland

- continued to support the review of Queensland property laws being undertaken by the Commercial and Property Law Research Centre of the Queensland University of Technology, including by coordinating the release of an issues paper on administrative and procedural issues impacting on bodies corporate, for consultation with community titles sector stakeholders
- progressed amendments to the *Security Providers Regulation 2008* to reduce unnecessary red tape imposed on security industry licensees wishing to renew their licence and to make it easier for licensees to inform the Office of Fair Trading of changes in their personal particulars (for example, contact details)
- progressed work on national projects falling within the remit of the Legislative and Governance Forum on Consumer Affairs, including preparatory work for the review of the ACL which commenced in 2016, extending unfair contract terms protections to small business, and streamlining the administration of the ACL and reducing the compliance burden.



# NATIONAL ACTIVITIES





All Australian and New Zealand Ministers responsible for fair trading and consumer protection participate in the Legislative and Governance Forum on Consumer Affairs (CAF). CAF's role is to consider national fair trading issues and, where possible, develop a consistent approach to those issues. Communiqués from CAF meetings can be found at [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)

CAF is supported by a committee including senior officials from each fair trading agency known as Consumer Affairs Australia and New Zealand (CAANZ). In turn, three advisory committees and one consultative committee support CAANZ.

The OFT is an active participant in CAANZ and its supporting committees. The supporting committees often conduct discrete national projects on topics of interest or areas of concern.

- The Policy and Research Advisory Committee (PRAC) focuses on the development of common policy approaches to national consumer issues, particularly as they relate to the ACL, and coordinates the development of any amendments to the ACL. The PRAC also conducts national consumer policy research.
- The Education and Information Advisory Committee (EIAC) focuses on national cooperation and coordination for education and information activities relating to the ACL and consumer issues more generally.

- The Compliance and Dispute Resolution Advisory Committee (CDRAC) focuses on national cooperation and coordination for compliance, dispute resolution and enforcement activities relating to the ACL and consumer issues more generally. CDRAC is supported by a Fair Trading Operations Group (FTOG), which deals with day to day liaison on enforcement issues.
- The National Indigenous Consumer Strategy (NICS) Reference Group leads development and implementation of the NICS Action Plan, which is designed to improve marketplace outcomes and reduce disadvantages for Indigenous consumers across Australia.

A representation of CAF and its committees is at Appendix 3.

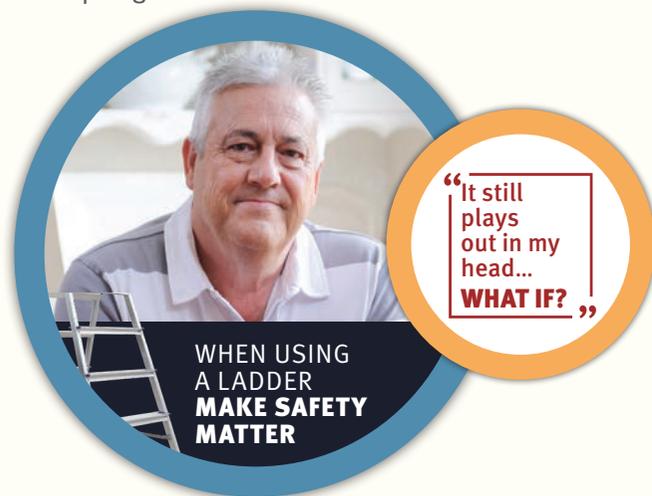
## EIAC national projects

### Ladder safety campaign (Qld led)

The ladder safety project commenced in 2015–16 and aimed to remind older men to practice safe ladder use and to prompt them to think before they act. It also encouraged the target audience to consider the consequences of unsafe ladder use.

The project produced YouTube films, a poster, a flyer with included safety sticker, website content and social media. The YouTube videos featured stories of three ladder fall victims and chronicled their fall, recovery and life after their ladder injury.

The campaign launched in September 2016 to coincide with Father's Day and the beginning of Spring.



*'Ladder safety matters' campaign*

### ACL guides

A series of guides was developed in 2010 to educate businesses about their rights and obligations under the ACL on the following topics:

- Consumer guarantees
- Avoiding unfair business practices
- Sales practices
- Product safety
- Unfair contract terms

Since the ACL came into effect in 2011, it has been applied by regulators and interpreted by the courts, providing an opportunity to update the guides with case studies and provide further clarity to assist businesses to comply.

The project commenced in 2014–2015 and continued through 2015–2016. The OFT provided content and graphic design of the reviewed ACL business guides.

### NDIS education tools

The National Disability Insurance Scheme (NDIS) commenced on 1 July 2016, introducing a fundamental change to the market for goods and services in the disability sector. NDIS provides many consumers with disability, for the first time, the opportunity to exercise choice and the power to make purchasing decisions in relation to their disability needs.

The ACCC-led project developed a suite of education tools for consumers with disability (CWD). This included videos, fact sheets, industry guidance and an easy English consumer guide which outline the rights and obligations of consumers and businesses in the disability sector. The resources were released late in 2016.

In addition, due to the early launch of the NDIS in Townsville, Charters Towers and Palm Island on 1 April 2016, the OFT also developed and distributed a CWD-focussed flyer.

### Property spruikers

Following a CDRAC project in 2014–2015, a national educational campaign was launched by consumer regulators to warn potential property investors about property spruikers who claim to be 'wealth creators'.

Property investment promoters, or spruikers, invite people to their 'wealth creation' seminars, often for free, with the promise of investment tips or opportunities. They typically promote a property investment system or market a specific property development.

The project produced YouTube films, a poster, a flyer, a radio advertisement, media statements and print articles, letters to stakeholders, website content and social media messaging. The campaign launched in May 2016.

## CDRAC national projects

### Travel and Accommodation Providers (Qld led)

Following the repeal of the *Travel Agents Act 1988* on 30 June 2014, the OFT led a national research project relating to complaints about travel and accommodation providers. This targeted potential ACL offences including bait advertising, unsolicited selling, false or misleading representations, consumer guarantees and unfair contract terms.

Complaint and enquiry information from all consumer protection agencies was analysed. The report revealed no increase in complaints since deregulation and only a small number of complaints regarding the liquidation of agents.

### Most complained about businesses

ACL regulators share data to identify which businesses are the most complained about nationally.

The emphasis of this project is to enable a nominated ACL regulator to take the lead with a business to explain the project and seek an explanation from the business on what steps they will undertake to address and reduce complaints. The businesses targeted by this project are generally large organisations that are well resourced and have extensive legal and compliance teams.

### Credit card chargebacks

Consumer agencies regularly receive complaints about transactions that have not been fulfilled. Where goods or services have been paid for by a credit card, consumers can seek a chargeback on their account and recover the funds from the merchant bank.

The aim of this project was to establish a common understanding of chargebacks by ACL regulators and operational staff, and create a suite of tools enabling ACL regulators to assist consumers to utilise chargeback as a means of addressing disputes with traders when appropriate.

The project created a readily accessible suite of tools to help ACL regulators understand the rules and conditions that govern credit card chargebacks and provide a unified approach.

### Training providers

The Training Provider national project continued from 2014–15 and identified serious conduct issues in the sector with vulnerable consumers being misled into signing up for courses funded by loans through the Commonwealth Government's VET FEE-HELP scheme.

The OFT undertook compliance and enforcement activities against non-compliant traders, in addition to educating consumers and traders about their rights and obligations under the ACL. The OFT assisted in the development and distribution of targeted educational material and warnings for consumers and community workers and educated VET suppliers and marketers.

The project delivered education to raise awareness amongst consumers and traders, as well as compliance and enforcement activities with identified non-compliant traders.

### Real estate

The aim of the project was to conduct research to assist regulators in gaining a better understanding of the key regulatory issues for the real estate agency sector at a national level. This included capturing data on all complaints about real estate agents, for the previous four financial years, as well as the top 10 traders complained about, to analyse trends.

The project was also an opportunity for regulators to share lessons learned, experiences and best practice models.

## NICS national projects

### Funeral products

In 2014–15 consumer protection regulators identified that Indigenous consumers were signing up to funeral products which were expensive and did not meet their needs. The national funeral products campaign was developed to help Indigenous consumers make informed choices and avoid common pitfalls when buying funeral cover.

In 2015–16 to help share the key messages of the project a formal campaign launch was undertaken and the OFT distributed information to consumers including through visits to communities in Cherbourg, Cooktown, Hopevale and Wujal Wujal. The OFT also promoted the project's educational film *Avoid a funeral R.I.P. off*, distributed the *Paying for funerals* publication, hosted new website content, and shared information on social media.



## Other national projects and activities

### Itinerant traders

'Stop Travelling Con Men' is a national approach and coordinated strategy to protect the Australian community from misleading and deceptive conduct by people pretending to be legitimate tradespeople. The campaign began in 2011, and involves fair trading agencies, police and immigration authorities.

These traders are typified by poor workmanship, standover tactics, and wilful breaches of the ACL rules governing unsolicited sales and cooling-off periods. They typically offer basic handyman or tradesman services like bitumen driveway laying, roof painting or repair and tree lopping.

Itinerant traders are also known to target Indigenous communities, although the conduct usually differs in that traders sign up consumers to direct debit payment arrangements for goods including whitegoods, water filters and first aid kits or charitable contributions.

In 2015–16, the OFT issued 13 media alerts on reported sightings of travelling con men. Alerts are sent to local radio stations to help disseminate information directly and quickly to local residents. The national campaign has been scaled back, although the OFT will continue to issue alerts about sightings of itinerant traders.

### Button Battery safety

Following the inquest into the death of Summer Steer, a Queensland child who died after swallowing a button battery, a national strategy was developed to reduce incidents of child exposure to button batteries.

A button battery safety video was produced and an Industry Code developed to further assist in reducing the hazards of button batteries.

ACL regulators are continuing to collect evidence to inform regulatory and other approaches to improve button battery safety. Marketplace surveillance, in the form of unannounced and covert spot checks, is regularly undertaken to raise awareness and guide supplier and industry improvement of the safety of consumer products that use button batteries.



## Scams

In 2015, the *Targeting scams* report by the ACCC reported nearly \$85m lost by Australians to scams. The most common scams were investment scams, dating and romance scams, and advance fee fraud.

The OFT is a member of the Australasian Consumer Fraud Taskforce (ACFT) which includes 21 Australian and New Zealand government consumer protection and law enforcement agencies.

The ACFT organises the annual National Consumer Fraud Week, which ran from 16–22 May 2016. The theme was ‘Wise up to scams’ and focused on identifying scams through regularly used social media websites, such as Facebook, Twitter etc.

The ACFT members participate in fraud and scam prevention activities during National Consumer Fraud Week to:

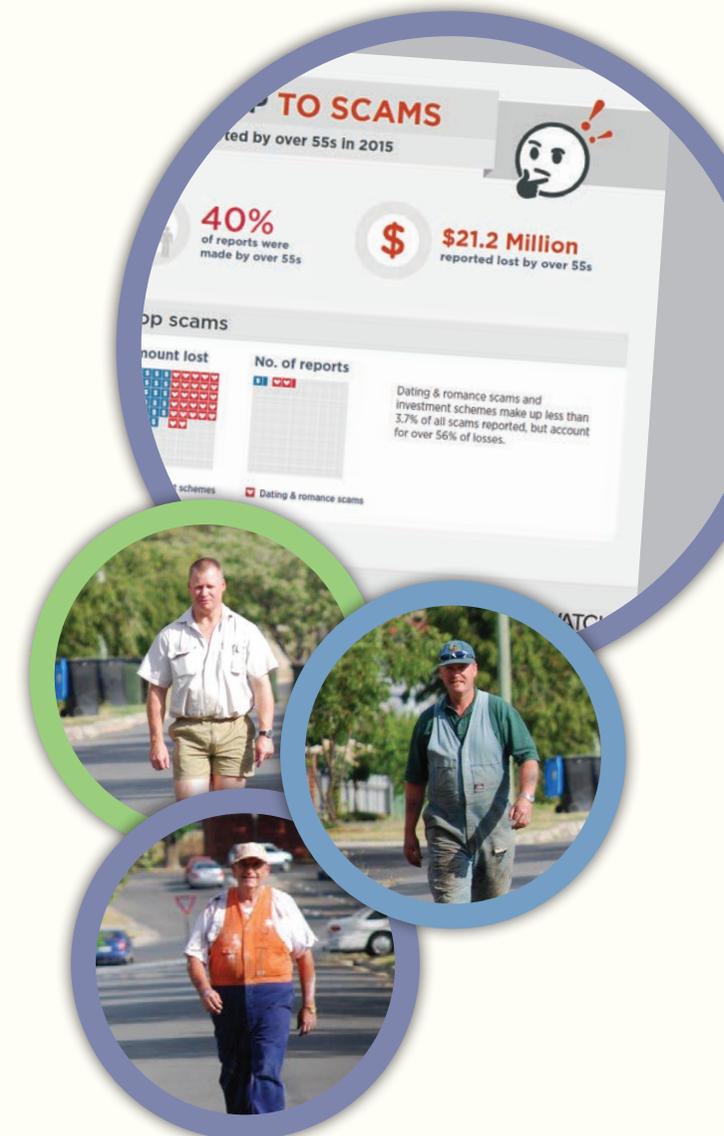
- raise awareness of fraud and scams
- provide advice to consumers on how to avoid being victimised.

In 2015–16, the OFT’s campaign focused on:

- educating Queenslanders about protecting themselves online
- learning how to identify, avoid and disengage from scammers and fake profiles
- raising awareness of fraud activity in Queensland
- knowing who to report a scam to and encouraging Queenslanders to report scams, whether they’ve been a victim or not.

Educating consumers on various types of scams, how scammers operate and what to do if they’ve been a victim is important. A knowledgeable consumer is an empowered consumer.

While the likelihood of apprehending scammers and recovering money is low, the OFT will take enforcement action where perpetrators can be located. The OFT often works with the QPS over scams.



# PRIORITIES



In the next year, the OFT will maintain its focus on regulated industries and selectively target specific issues within those industries for compliance or education activities.

The OFT will continue integration of security provider compliance checks with the Office of Liquor and Gaming Regulation.



## These areas will be a priority for the OFT in 2016–17:

**real estate agents**, particularly around trust account compliance and advertising

**motor dealers**

**crowd controllers**

**locksmiths**

**second hand dealers**

**lay-by agreements**

**price scanning**

**was/nor pricing**

**online advertising and claims**

This list of priorities is indicative and is subject to change as other matters emerge. We publish our Proactive Compliance Calendar on our website [www.qld.gov.au/fairtrading](http://www.qld.gov.au/fairtrading)

## Appendix 1—List of OFT legislation

The OFT administers more than 60 Acts.

Primary among these are:

*Agents Financial Administration Act 2014*

*Associations Incorporation Act 1981*

*Collections Act 1966 and Charitable Funds Act 1958*

*Cooperatives Act 1997*

*Debt Collectors (Field Agents and Collection Agents) Act 2014*

*Disposal of Uncollected Goods Act 1967*

*Fair Trading Act 1989* incorporating the Australian Consumer Law Qld

*Fair Trading Act 1989 (Code of Practice—Fitness Industry) Regulation 2003*

*Fair Trading Inspectors Act 2014*

*Funeral Benefit Business Act 1982*

*Introduction Agents Act 2001*

*Motor Dealers and Chattel Auctioneers Act 2014*

*Partnership Act 1891*

*Property Occupations Act 2014*

*Sale of Goods Act 1896*

*Second-hand Dealers and Pawnbrokers Act 2003*

*Security Providers Act 1993*

*Tattoo Parlours Act 2013*

*Tourism Services Act 2003*

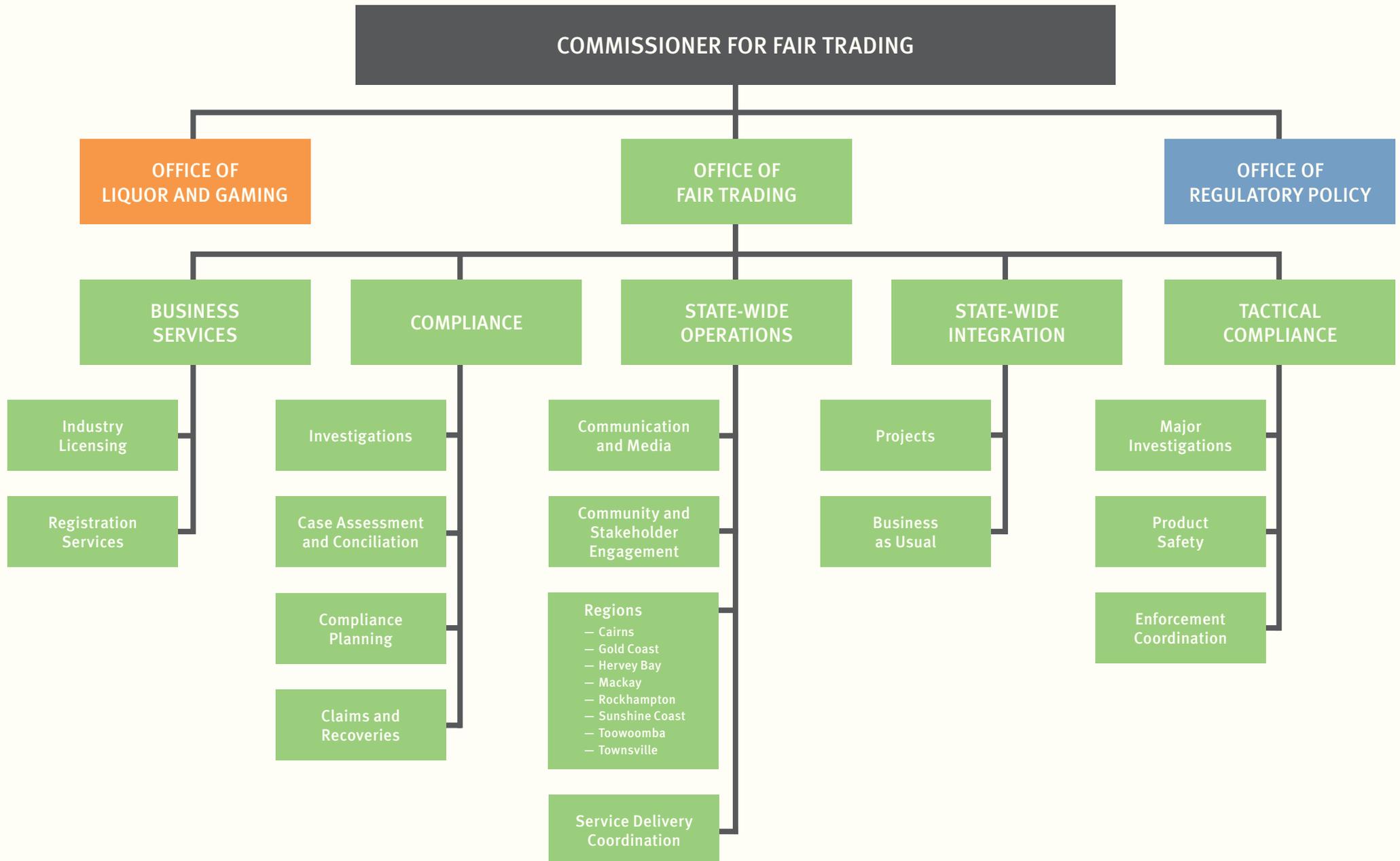
A full list of Acts and Regulations administered by the OFT can be found on the OFT website.

Unlike consumer protection regulators in some jurisdictions, we don't have responsibility for:

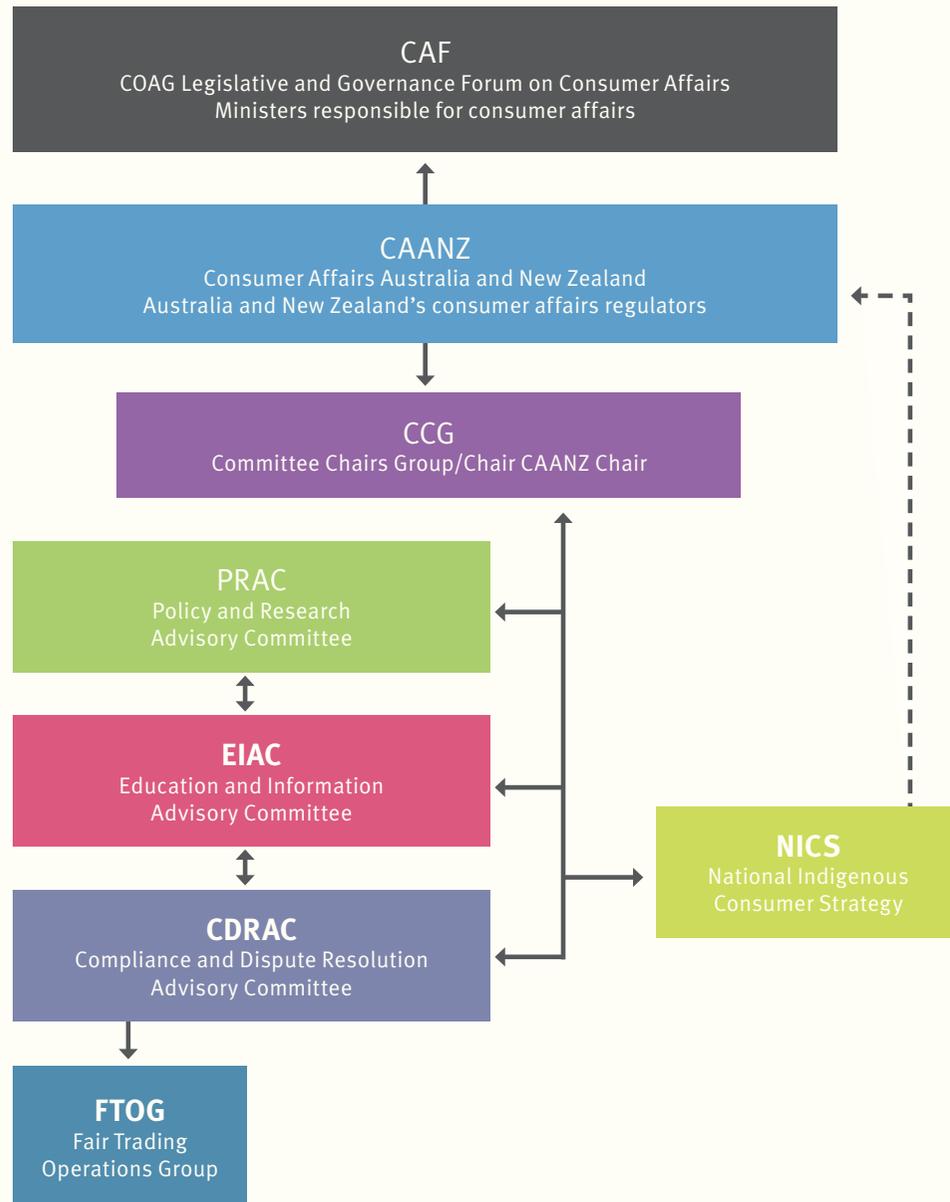
- residential tenancy
- building and construction
- body corporate management
- motor vehicle repairer licensing
- electrical safety
- tradesperson occupational licensing
- liquor industry regulation
- prostitution licensing
- competition law
- price surveillance
- manufactured homes (since February 2011)
- boarding houses (since May 2012)
- retirement villages (since May 2012).



## Appendix 2–OFT organisational structure



## Appendix 3—CAF structure



## Appendix 4—List of impacts

The OFT is a state government agency which operates within the legislation, parameters, policies, procedures and guidelines of the Queensland Government. Occasionally, this may impact on the OFT's responsibilities and functions, including staffing levels and budget allocations. As a result, the outcomes and statistical data reported may vary from year to year.

Significant impacts during 2015–16, included:

- the Queensland Parliament's Legal Affairs and Community Safety Committee inquiry into: Lemon laws—An inquiry into consumer protections and remedies for new car buyers
- review of the Australian Consumer Law
- amendments to the ACL in relation to country of origin labelling and free-range egg labelling and consultation on unfair contracts
- extending unfair contract terms protections to small business
- project work to allow applicants to lodge more of OFT's licensing and registration application and renewal forms online.



