

5 THE REVIEW PROCESS (ONGOING)



The internal case review element is a very important one and is applied throughout the complaint and inquiry process up to and after the closure of a matter and may continue beyond closure. The [Case Planning, Recording and Management tool](#) (CPRM tool) provides for regular self-review and senior officer review documents to ensure a case stays on track. All review documents must be uploaded to MACS with a file note advising of the review. The 'review investigations' tab can be used for investigation files. A copy of the review should also be kept on physical files.

Case file reviews provide valuable information to aid intelligence gathering and analysis, identify industries, practices or products for proactive compliance action, and identify matters which may benefit from the OFT's communication strategies. These reviews also benefit the OFT in providing an opportunity to improve practices and procedures by identifying and sharing learnings when things are done well and identifying areas where further training or guidance may be required.

5.1 KEEPING ON TRACK

Regular reviews are invaluable for keeping on track when progressing through a case. The principles of review and risk management are that:

- regular reviews are essential to maintaining the objectives, standards, transparency and accountability of the OFT's CEP
- information gathered from reviews helps analyse the OFT's compliance practices to identify:
 - proactive compliance activity
 - system and resource successes and improvements
 - future directions

5.2 SELF-REVIEW

Regular self-review of cases helps achieve satisfactory outcomes and ensures matters are being dealt with effectively and efficiently. This occurs by:

- performing a weekly (**no less than fortnightly**) self-review of a conciliation or investigation case file
- ensuring reviews on investigation case files are based on the initial case plan to identify if the inquiry is proceeding satisfactorily and within determined timeframes
- seeking guidance from experienced colleagues to confirm results or to find alternative viewpoints and opinions
- re-examining results and how they were obtained

Regular self-reviews can highlight risk management issues and aid in tracking the progress of the case file and will also identify in a timely manner, if a matter should change direction. A note that a self-review was undertaken can be noted in MACS file notes.

5.3 SENIOR OFFICER REVIEW

Case file reviews by senior officers should occur regularly. Where staff are new or where an OFT officer is unsure of how to proceed with a matter, reviews may occur more often. The onus on ensuring these reviews occur is placed on the senior officer who should examine all relevant subjects of an open case file, including:

- the contents of the file at the time of allocation
- the conciliation process (if applicable)
- contents of an initial case plan



- the statute bar date/s noted
- any alterations to the case plan during an investigation
- any new information that may have changed the scope or direction of the matter
- if the OFT officer handling the case has:
 - identified all allegations and issues within the complaint
 - dealt appropriately with the complainant
 - applied relevant and suitable methods and avenues of inquiry
 - kept up-to-date activity notes
 - recorded critical decisions
 - placed relevant references on file
 - met the required timeframes
 - recorded and filed relevant decisions or public interest factors
 - recorded self-reviews
- if the matter can progress
- if the evidence is sufficient
- whether enforcement action is/is not appropriate
- the investigation summary is accurate and sufficient
- whether any emerging issues require reporting
- if file records reflect the time and effort applied to the matter

It is the role of the senior officer reviewing a case to provide feedback and suggestions to the OFT officer following their reviews.

Where a process or action appears to have been overlooked, the senior officer should not assume the process has, or will happen, prior to closing the file. They must instead identify the issue with the OFT officer as part of the review and implement strategies to rectify any issues.

Where a process or action veers from the usual process, but still complies with OFT's policies and procedures, the senior officer should have an open mind during review discussions to the particular course of action considered by the OFT officer.

5.4 CLOSURE REVIEW

When a case is ready for closure, the OFT officer handling the matter must ensure:

- the complaint or investigation has been appropriately finalised
- all outcome details are recorded in the Marketplace Accreditation and Compliance System (MACS)
- all relevant material is on the case file to support recommended finalisation actions
- original documents and exhibits have been returned to the owner or disposed of in accordance with the *Evidence (exhibit) and property handling procedure*
- a final case plan file review form is completed, signed and provided to the senior officer
- their part of a checklist is completed

The senior officer must conduct the final closure review within **15 business days** of receiving the complaint or investigation file and if satisfied, sign off on that closure review form and complete and sign their side of the checklist.



Upon closure of a case file, all original documents and items held in any OFT exhibit rooms must be returned to the owner or disposed of in accordance with internal policy. These items **are not** to remain in the exhibit rooms unnecessarily.



5.5 WHEN THINGS GO WRONG

Things sometimes go wrong even with the best-laid plans. A negative situation can usually be corrected by taking swift and appropriate action to remedy a problem.

- The golden rules

When a case goes wrong, the following golden rules should be enacted:

- Acknowledge a problem early - Notify a senior officer as soon as becoming aware of a problem. Anyone who could be unfairly prejudiced due to the problem should also be advised unless this would exacerbate the matter or compromise the case
- Fix a specific problem - Act to right the wrong immediately. However, this may not always be possible and in some cases the case cannot be recovered
- Fix a general problem - Always examine the case plan. If the problem is procedural, act to rectify the problem across the board
- Common examples

Examples of when things can go wrong include:

- the OFT officer having an actual or perceived conflict of interest
- excessive delay in resolving issues
- information leaks
- failing to apply procedural fairness
- losing an essential or a highly confidential document
- failing to identify unrelated criminal matters during an inquiry
- the investigation diverts from the plan and needs to focus on productive investigative avenues

5.6 REVIEW – COMPLAINANT DISSATISFIED WITH OUTCOME DECISION

Where a complainant lodges their dissatisfaction about an outcome decision made by the OFT, the issue/s should be addressed under DJAG's [Client complaint management policy](#) by an OFT officer senior to the OFT officer who handled the matter. This may involve examination and resolution (or a review) as a first step with the complainant advised in writing of the outcome.

If the complainant is still not satisfied, they can request an internal review to be undertaken which will be completed by a more senior OFT officer who will advise the complainant of the outcome in writing. The final reviewing officer will also advise the complainant to raise their concerns with the Queensland Ombudsman, as the authority to review government decisions, if they still remain dissatisfied with the OFT.

Where the senior officer identifies the outcome was unsatisfactory/incorrect, the correct outcome must be actioned and a discussion held with the OFT case officer to ensure appropriate case management is conducted in future. Notifying the complainant of the outcome is required under the Client complaint management policy and will occur regardless of the finding.

5.7 REVIEW – COMPLAINANT DISSATISFIED WITH OFT OR ITS STAFF

Where a complainant is dissatisfied with the OFT as an agency, its staff or its internal business practices, the issue should be addressed under DJAG's [Client complaint management policy](#).

5.8 ANNUAL REVIEW

OFT officers should also remember a percentage of finalised case files are quality assessed annually. These quality assessment reviews allow for examination of the OFT's case



management practices to ensure case management performance is reliably maintained. Annual reviews also confirm enforcement action is relevant and is being consistently applied to secure the best outcomes.



6 CASE ASSESSMENT AND ALLOCATION

For consistency in assessment and data entry, initial case assessment generally occurs in Brisbane within the CARTA unit. Complaints, including those lodged in regional offices, and alleged breaches of legislation coming to the attention of the OFT via other avenues, are to be forwarded to the unit for an initial assessment.

CARTA also receives information that may determine if an agent or auditor has breached their obligations under the AFAA or related legislation. For example, an agent failing to lodge a trust account audit report or an auditor failing to advise the CE of a trust account discrepancy. The trust account section of CARTA:

- receives and monitors trust account audit reports
- receives and monitors notifications about the opening, closing and change of name to a trust account, and
- receives notifications about overdrawn trust accounts or dishonoured cheques

Where a significant breach is identified, a referral is made to the relevant OFT investigation team after appropriate information and allocation entries are made in MACS.

After each matter is considered and all relevant information is entered into MACS, the matter is allocated in line with [section 6.7.3](#) of this manual.

6.1 COMPLAINT ASSESSMENT

The standard assessment timeframe is within **10 business days** from receipt of the matter. The following must be considered when initially assessing a matter:

- Information
- Jurisdiction
- Internal strategy
- Breach identification
- Categorisation

6.1.1 Complaint Information

It must be established if there is sufficient information for the OFT to consider the matter further. Complaints or safety concerns received by consumers should:

- be in writing, preferably on the OFT general complaint form or the consumer product safety complaint form (subject to the literacy of the complainant)
- include relevant complainant or concerns and trader details
- be legible
- contain sufficient information to enable an accurate assessment as to whether or not there is a likely breach
- clearly state the facts and issues of the matter and what is required from the OFT
- *if appropriate, provide confirmation (where required) that the complainant has already approached the trader to have the matter resolved.

*Note: In cases of serious fraudulent activity or those involving high-risk traders or vulnerable consumers, or where retaliation may be a concern, contact with the trader may not be appropriate and should be considered when assessing the matter.

Careful consideration must be given to the detail of the complaint and what is being alleged. Sufficient information is to be obtained from the complainant and any other readily available source (e.g. Industry Licensing where a licence administered by OFT is concerned). Where a breach is suspected based on the information provided or obtained, the matter may be upgraded to an investigation.



If the complainant cannot provide sufficient information or the information appears reckless, malicious or trivial, the matter may not proceed. It is arguably an abuse of regulatory power to commence an investigation into a trader's operations without sufficient justification for doing so, given the potential cost to a trader's business to respond to baseless and unfair allegations. Responding to these types matters is also an inefficient use of OFT resources.

6.1.2 Requesting further information from a complainant

Where further information is required, telephone the complainant if possible, to confirm information sought and the reason/s why.

If a complainant has provided their name and a general location but not sufficient contact details, further enquiries for a contact number should be undertaken using resources such as telephone directories. However, these types of enquiries should be limited and relevant to the circumstances and resources available.

Where contact is made, a letter (or email) must also be sent confirming the request and contain advice that if no response to the request is received by the OFT within **20 business days**, no further action will be taken and the file will be closed.

If further information is provided but is insufficient or irrelevant, further correspondence should be sent to the complainant requesting they contact the assessing officer. If the complainant fails to contact the officer within **20 business days**, the file can be closed.

Complaint files closed as a result of failure on the part of the consumer to provide requested information, can be reopened at the discretion of the assessing officer in view of further information being received at a later date.

6.1.3 Anonymous complaints

Where the complainant is **anonymous** a reply will obviously not be required. However, the information received must still be recorded in MACS for intelligence and record keeping purposes.



At the assessment stage, always search the MACS database to establish if the entity subject to the matter has been or is currently being investigated by OFT and if there are any alerts noted against the entity.

6.2 CURRENT COMPLAINTS AGAINST THE SAME TRADER

In cases where there are other current complaints against a trader, it is still necessary to request sufficient information from the latest complainant. The information provided may affect the categorisation of the matter.

6.3 OFT'S AUTHORITY TO CONSIDER

When determining if the OFT has jurisdiction of a matter, the following should be considered:

- Does the breach fall primarily within the OFT's legislation?
- Does the breach fall within the OFT's legislation but the situation is more relevant to legislation administered by another agency?
- Is the trader located in another Australian State or Territory?
- Is the complainant located in Queensland? (For conciliation purposes only)
- If the trader is based overseas and the alleged offence occurred in Queensland, is there a provision in the relevant OFT legislation allowing the legislation to be enforced outside of Australia?

Some Acts such as the FTA, extend to misconduct outside of a jurisdiction including overseas. However, actually enforcing the law can present major legal and practical challenges. The lack of trader information or location generally prohibits the OFT from



enforcing its legislation overseas. Nevertheless, checking relevant legislation in these instances is to be considered.

Difficulties experienced in determining the place of an offence should be discussed with a senior officer and/or the OFT's Enforcement Coordinator (EC) to confirm if OFT can proceed with the matter.

6.3.1 Referral to another agency

If the complaint information clearly relates to matters falling within another agency's legislative responsibility, OFT officers should refer the complaint to that agency as soon as possible upon the complainant's consent.

Some complaints allege cross jurisdictional breaches. E.g. complaints against real estate agents may also involve the Residential Tenancies Authority (RTA). In such cases, the OFT should decide if the OFT issue is of sufficient substance for further consideration, or if it is more effective to refer the matter to another agency to secure a more successful outcome.

In some cases there may already be provision for a matter to be referred to another agency as part of a standing agreement between the OFT and another agency such as a [Memorandum of Understanding](#). In these cases, the matter should be referred accordingly. The following should be undertaken for referrals:

- Confirm complainant's consent to refer the matter. This can be done through the consent provisions on their complaint form or via their written confirmation of referral or consent
- Record reasons for referral in MACS
- Record the referral details of the agency, location and if possible, contact officer in MACS
- Advise complainant in writing of the referral

6.4 TRUST ACCOUNT AUDIT REPORT ASSESSMENT

As noted at section 3.4 of the manual, agents managing a trust account and their appointed auditor, must comply with a number of requirements under the AFAA and its regulations. Agents must do things like appoint an auditor, lodge annual trust account audit reports and notify the CE about the opening, closing and any name changes to trust accounts. Auditors also have responsibilities including providing the agent with a signed original audit report and notifying the CE of trust account irregularities.

OFT's Trust Account officers receive and assess audit reports and monitor audit reports and trust account requirements. Where concerns of non-compliance arise, officers follow procedures which include contacting the agent if required to seek further information, entering all relevant information into MACS and referring cases where required.

In addition to assessing audit reports to identify breaches of legislation, Trust Account officers also assess:

- Form 5 notifications about the opening, closing or change of name to a trust account This is done using a 'TANOTA' (Trust Account Notifications Assessment) form
- Notifications about dishonoured cheques and overdrawn trust accounts. This is done using a DISCO (Dishonoured Cheque and Overdrawn trust account) form

The TANOTA and DISCO forms are self-explanatory and purposed to highlight certain information and any legislative breaches. Where a breach is identified, the matter should be dealt with by posting a High severity Note in MACS or referring the case for investigation in keeping with the CEP, this manual and the Trust Account Enforcement Directive.



The TANOTA and DISCO forms are being incorporated into the CPRM tool which has a statute barred calculator for each identified breach to ensure timely and legal enforcement action.

Where an investigation is warranted, a case file is created and allocated to the appropriate OFT office. Brisbane and regional inspectors allocated a trust account matter for investigation, can use the CPRM case file already created and uploaded to MACS by the Trust Account officer and prepare a case plan using this CPRM case file document.

Developing a case plan is expanded on at section 9.3.1 of this manual.

Brisbane and regional offices run a daily report to determine trust account matters allocated to them.

6.5 INTERNAL STRATEGY TO DECLINE A MATTER

After the conclusion of information and jurisdiction assessment, consideration is given to determine if the matter should be declined. As well as reasons as noted at 6.3, acceptable reasons for declining a matter include but are not limited to:

- no breach of OFT legislation has been identified and the matter cannot be conciliated
- the matter is already being investigated by another agency or any OFT action may hinder another agency's investigation of issues raised
- legislative timeframes prohibit the OFT taking enforcement action (statute barred).
Note – the statute bar only prevents issue of a fine. Official warnings and trader education can still be actioned even though the legislative timeframe has expired.
- systemic issues raised require a more strategic approach other than the investigation of individual complaints
- complaint forwarded for information only or the OFT is aware another agency deals with the issue e.g. cold call investment schemes are referred to Queensland Police
- complainant indicates they are not prepared to support their complaint in writing or at court/tribunal proceedings which may be crucial to the OFT obtaining a successful outcome
- complaint withdrawn prior to the OFT commencing an inquiry and the complaint information would be crucial to any enforcement action
- a court or tribunal has already ruled on the relevant issues of the complaint
- trader, complainant or key witnesses cannot be located in Australia, or are residing overseas (unless sufficient information has been obtained to sustain enforcement action)
- suitable enforcement action already taken against trader based on similar complaints around the same time of a current complaint

These factors may also be taken into consideration throughout each case management phase to suspend or finalise a case, or to decide not to take enforcement action. **Advice or guidance from management must be sought where there is indecision about what action should be taken.**

In all cases where a decision has been made **not to accept a complaint**, the **complainant**, if known, should be advised in writing of:

- the decision and reason/s for not accepting the matter and if relevant, referral advice
- any other remedies available to have the matter resolved, e.g. court or tribunal application or conciliation
- an offer to discuss the decision via telephone
- an OFT generated complaint file or enquiry reference number




6.6 BREACH IDENTIFICATION

Once sufficient information has been obtained, further consideration is given to any possible or alleged breaches of OFT legislation.

The '**substantive breach**' is the most significant breach identified in the complaint. To assist identifying a substantive breach, the following should be considered.

- Have all alleged breaches been identified?
- What is the significant breach? (legislative penalty amount plus detriment caused)
- Does sufficient information exist in the complaint to form a belief alleged breaches may also be part of a larger breach?
- Is there reasonable information to form a belief the complaint is part of more serious conduct and subsequently, a more significant breach?
- Has enforcement action been taken against the trader for a more significant matter involving an activity similar to the activity reported in this complaint?

 Where a breach is identified, it is **IMPERATIVE** officers immediately review the **statute barred date** by using the statute bar calculator available as part of the [CPRM tool](#). Where the date differs from that which is already recorded in MACS, officers must note the statute bar date change in their self-review notes and ensure their senior officer is notified of the change.

6.7 CATEGORISATION

At this stage of the assessment process it will have been determined that:

- the OFT has jurisdiction
- the complaint is suitable for conciliation or investigation
- the complaint contains sufficient information to allege a breach of OFT legislation
- a substantive breach is identifiable
- it is appropriate to devote OFT resources to the complaint

6.7.1 Breach category

Breach categories are developed based on the assessed risk for various provisions under most legislation administered by the OFT. There are five breach category levels – Category 0 to category 4, rated highest to lowest risk respectively.

6.7.2 Case complexity

Cases may also be categorised in terms of complexity (high, medium and low).

- Category 0 extreme risk files are automatically given a high complexity rating
- Category 1 very high risk and category 2 high risk files are given a high, medium or low complexity rating (see table below)
- Categories 3 moderate risk and category 4 low risk files are automatically given a low complexity rating

Categories 1 & 2	High complexity	Medium complexity	Low complexity
Complexity factor	Serious systemic high level issues. E.g. Loan sharks, major odometer tampering, marketeers.	Breaches which could lead to serious issues E.g. Claim matters, misrepresentations, trust account issues.	Black and white breach matters. E.g. Unregistered business names, failure to keep required records.
Depth of OFT knowledge/ inquiries required	New emerging misconduct not well understood within OFT. Will require significant research	Uncommon misconduct, but OFT has previous experience of the misconduct;	Nature of misconduct is easily understood or very familiar to OFT. OFT has experience in

	/investigation, time and/or money.	OR Reasonably common type of misconduct, but may present challenges.	investigating matter taking enforcement action.
Trader/s attitude and compliance history	Trader/s not expected to cooperate. Trader/s history of serious (Cat 0 or 1 type) non-compliance. Likely challenges. Trader/s well-resourced and may engage highly qualified experts and counsel. Trader/s may endeavour to stall/delay/thwart investigation/enforce ment actions.	Trader/s may prove challenging to manage E.g. highly aggressive/threatenin g. Trader/s may be a serial offender and expected to hinder OFT inquiries. Trader/s may have some history of Cat 2 type non-compliance.	Trader/s expected to be reasonably cooperative. No known history of regulatory non-compliance.
Level of media/political interest	Has, or is likely, to attract significant media and/or political attention.	May be subject of some media attention and low level political interest	Highly unlikely to provoke media or political interest.

6.7.3 Case allocation based on breach category and complexity

Matters are assessed and allocated by the CARTA unit to other OFT areas based on the category and complexity level and the location of trader.

Category and complexity	OFT unit responsible for actioning the case
Category 0 – Extreme risk Complexity - High	Major Investigations unit
Category 1 – Very high risk Complexity – High, medium, low	Marketplace and Financial Investigations unit or regional office
Category 2 – High risk Complexity – High, medium	Marketplace and Financial Investigations unit or regional office.
Category 2 – High Risk Complexity - Low	Case Assessment and Response unit or regional office
Category 3 – Moderate risk Complexity - Low	Case Assessment and Response unit or regional office
Category 4 – Low risk Complexity - Low	Case Assessment and Response unit or regional office

6.7.4 Case priority

Once the complaint is assigned a category (and a complexity rating where relevant), it is prioritised to ensure it is handled efficiently and effectively. Priority ratings are:

- **High** – An investigation should be commenced immediately. This may be due to any one of a number of factors, including:
 - concerns over evidence being lost, stolen or destroyed
 - the complainant's detriment
 - risk of further detriment to the complainant or the public in general
 - risk of further non-compliance or improper activity



- QCAT order to perform an investigation
- Ministerial request
- Ombudsman request
- **Medium** – The investigation should be commenced as soon as possible and take precedence over routine matters assigned to the officer or the team
- **Low** – An investigation should be commenced as time and resources become available without compromising other OFT obligations

A case may not always stay at the same priority rating. In some circumstances, it may be important to quickly attend to the initial inquiry phases then reprioritise the matter at a less or more urgent level once a course of action has been determined and commenced.

6.7.5 Category variation

An initial category assessment may be altered based on context factors. There will be cases where information comes to light that may warrant the matter being re-categorised. **A change to an original category must be approved by a senior officer.**

Matters are more likely to be upgraded than downgraded. A category upgrade will be undertaken **only once** unless there are exceptional circumstances. Adjustment factors can include, but are not limited to:

- input error regarding original category
- preliminary inquiry indicates the matter is more serious than originally evaluated
- a compliance check uncovers serious breaches requiring further inquiry
- additional complaints from differing complainants are received against a trader while an initial complaint against the trader is being investigated
- performance/testing of a product presents an immediate safety risk
- manager direction

6.8 INVESTIGATION TIMEFRAMES

The investigation commencement date is the date the complaint is categorised for investigation in MACS. The target timeframe allocated to each category is an important tool to assist in prioritising workloads. These timeframes are also part of the OFT's performance measures and feature in the department's *Annual Report and Service Delivery Statement* (SDS) where it is expected 75% of investigation files will be completed within the respective timeframes.

6.8.1 Legislative timeframes for proceedings

With regard to **completion timeframes**, officers must also be aware various Acts legislate timeframes to limit when proceedings for offences can be initiated.

Where it appears court or tribunal action may be appropriate, officers must review the legislation relevant to a matter to determine legislative requirements for commencement of proceedings and who can commence those proceedings. Some examples are noted below.

OFT legislation	Commence proceedings (section of the Act)	Who can start proceedings (section of the Act)
<i>Agents Financial Administration Act 2014</i>	142 – Proceedings for an offence	No restrictions
<i>Fair Trading Inspectors Act 2014</i>	86 – Offences under the Act are summary	No restrictions
<i>Motor Dealers and Chattel Act 2014</i>	227 – Proceedings for an offence	No restrictions
<i>Property Occupations Act 2014</i>	225 – Proceedings for an offence	No restrictions



<i>Second Hand Dealers and Pawnbrokers Act 2003</i>	102 – Proceeding for an offence	103 – an authorised officer may appear and act in court
<p>The relevant sections above state a proceeding for an offence against this Act must be taken in a summary way under the <i>Justices Act 1886</i> within the later of the following –</p> <p>(a) *1 year after the offence is committed;</p> <p>(b) **6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.</p> <p>Subsection (a) and subsection (b) must both be considered to determine the correct statute barred date which is the last day proceedings can be filed in a court of competent jurisdiction.</p> <p>*1 year after the offence is committed - Calculated by adding one year to the date the offence occurred. The inspector (as the complainant) has 1 year to file proceedings for an offence.</p> <p>**6 months after commission of the offence comes to the complainant's knowledge - The complainant under the various Acts administered by OFT is usually the inspector managing the case. ! The complainant's knowledge is the point when all elements of the offence can be proven.</p>		
<i>Fair Trading Act 1989</i>	94 – Proceedings for offences	94 – only an inspector appointed under this Act or, by another person with the Commissioner's consent
<p>Section 58 of the FTA allows for prosecutions to commence within 3 years and notes that section 212 of the ACL (Queensland) applies to an offence against an FTA offence provision as if the offence were an offence against a provision of the ACL.</p>		

6.8.2 Contravention is outside of statute barred limitations

Where an identified offence appears to be statute barred, officers should consider the following before deeming the matter unsuitable for action:

- Have the statute of limitations calculation verified by another officer?
- Is the offence ongoing or is it linked to other offences? For example, the offence of opening a trust account at a branch outside of Queensland (s11 *Agents Financial Administration Act 2014*) might be statute barred as the offence occurred in Oct 2017, but if that is the only bank account the agent has, there are ongoing offences under s169 *Property Occupations Act 2014* and s16 *Agents Financial Administration Act 2014*

Keep in mind that while an immediate substantive offence is statute barred, there may be related offences that are not.

6.9 IDENTIFICATION AND ASSESSMENT OF CLAIM FUND MATTERS

In order to ensure potential claimants are advised of the operation of the claim fund at the earliest possible opportunity and to ensure a claim is lodged on time, OFT officers **must** make themselves familiar with parts 6 and 7 the AFAA in terms of:

- who can make a claim?
- who cannot make a claim?
- what Acts administered by OFT allow for claimable offences?
- the general time limit for making claims and QCAT's power to extend claim timeframes

If the case assessment unit receives a claim (generally on an AFAA Form 1) directly from a consumer or another part of OFT (such as Trust Accounts or the Financial Investigations Unit), or receives a complaint that is also intended to be a claim, the claim is to be sent to C&R at the time of assessment.



Where there is a reasonable belief a claim exists (a belief a person has suffered a financial loss due of an event listed in AFAA caused by a relevant person), the complainant **must be** informed that they **may** be able to make a claim against the claim fund. An email must be sent to ClaimsAndRecoveries@justice.qld.gov.au as soon as possible requesting a 'Claim Kit' be sent to the complainant. The email must advise C&R of:

- the case file number
- the complainants name and contact details
- the Relevant Persons name
- a brief outline of the alleged event. For example, rent monies not received from an agent or misappropriation of trust monies.
- note the Act and relevant sections
- general advice about contact with the complainant

Any documentation created (such as the email for delivery of a Claim Kit) or communication during a potential claim inquiry, **must** be noted in MACS and a copy attached to the file.

Each complaint/claim received relating to a claim lodged against the claim fund are automatically assigned for investigation as a category 1 or 2.



At no stage and under no circumstances during an assessment is an OFT officer to advise a complainant/claimant about prospects of success of a claim or the actual outcome of a claim. **This is solely the responsibility of the Manager, C&R.**

6.10 CASE ASSESSMENT AND CATEGORISATION ASSISTANCE

[Annexure C](#) provides a general guide for assessment factors and possible OFT action for each breach category.

[Annexure D](#) provides for the band level authority to make decisions (including enforcement decisions) during the course of a matter. The band levels noted are in line with the responsibilities of OFT officers in their respective roles. For example, officers at a band level of 3, 4 and 5 are experienced decision makers and can assist where there is doubt about case assessment, categorisation and general concerns about a matter.

In cases where further assistance is required during any part of the case assessment or management process, OFT officers are to consult with a senior officer.

6.11 POST ASSESSMENT

After all the information has been entered into MACS, matters within the OFT's jurisdiction but not providing for a breach of legislation, or where an alleged breach cannot be proven, are dealt with by way of non-enforcement action as noted in [Chapter 7](#) of this manual.

Where there appears to be a breach of legislation, the matter becomes an investigation. An investigation file is created in MACS ensuring the suspected breach or breaches, the breach category, complexity (where necessary), the priority level of the matter and the allocated OFT officer is noted in MACS.

The CARTA unit creates an electronic investigation file in the OFT's business drive for investigations remaining in Brisbane. Regional offices will create their own electronic investigation file in their regional business drive folders.

The investigating area (Brisbane or regional) will then make up the physical investigation file. OFT officers must then follow investigation procedures noted in this manual at [Chapter 9](#) Managing an investigation.





The onus is on the Managers of Brisbane and regional investigation units to ensure a daily MACS report is undertaken to identify any new investigation files allocated by the case assessment unit to their respective office.

6.12 RELEASE OF COMPLAINT INFORMATION

On being allocated a case, whether for conciliation or investigation, OFT officers should give consideration to the issue raised and:

- determine what complaint information needs to be released to the trader to progress the matter.
- contact the complainant to advise them what complaint information is necessary to give the trader and why
- seek their consent to give that information
- prepare a precis of the complaint ensuring there is no indication or subliminal information that would allude to the complainant's personal information
- make a file note on discussion with the complainant and the decision made

6.12.1 Complainant does not approve release information

There may be some situations where the complainant will not give the necessary approval. As a result, the action OFT can take to assist them in their dispute is limited. OFT officers should discuss the situation with their senior officer and decide if it is appropriate to close the file or, depending on the issue and complaints received against the trader or the trader's compliance history, if it may be appropriate to take non-enforcement action such as:

- send the trader education material
- conduct a trader education visit, or
- consider a compliance spot check

The complainant must be advised on any decision made.



7 NON-ENFORCEMENT ACTION

Matters falling within the OFT's jurisdiction but not providing for a breach of legislation, or where an alleged breach of legislation cannot be proven, are dealt with by way of non-enforcement action which includes:

Action	General consideration
Trader resolution (If complainant has not approached trader)	Refer complainant back to the trader or industry association (where relevant) for complaint resolution via that entity's complaint handling procedures and code of conduct
Conciliation (where contact details are available)	A matter may be resolved through conciliation where OFT acts as an intermediary between the complainant and trader in an attempt to facilitate an outcome
Education	General education - An honest mistake by the trader or its lack of legislative knowledge results in a phone call, letter or visit by the OFT to educate the trader Compliance advice letter – Used to emphasise specific legislative requirements – To be used only where an investigation is conducted but availability and credibility of evidence is not sufficient to prove an alleged offence and OFT remains concerned about the trader's actions . Advice on compliance with legislation through a CAL may be beneficial
Compliance check	Follow up on a trader who was provided with educational advice or trader spot check following intelligence received

7.1 TRADER RESOLUTION

Where no breach of legislation administered by the OFT can be established and the complainant has not contacted the trader or industry in the first instance, they should be encouraged to do so. Complainants can approach the trader or the industry association directly to discuss their issue and attempt to resolve the matter through the trader's complaint handling procedure or an industry's code of conduct.

If an agreeable outcome cannot be achieved, the OFT may consider the matter further with conciliation as a possible option.

7.2 CONCILIATION

Often a consumer's preference is for the OFT to remedy their complaint by obtaining redress (refund or compensation) from the trader. The OFT does not legislatively have power to force a trader to provide a remedy. Conciliation involves contacting the trader on behalf of the complainant (with the complainant's consent) and attempting to facilitate redress if possible.

Successful conciliation does not negate escalating a matter for investigation where a breach is identified. For example, a trader may agree to provide redress as a gesture of good faith however, if the trader has breached legislation administered by the OFT, successful conciliation does not stop the OFT from taking enforcement action where a breach is proven.

7.2.1 Conciliation advice to consumers

- The OFT will attempt to conciliate the matter, however the OFT **is not empowered** to "act" for the consumer in regard to any legal entitlement. In other words, **the OFT is**



not legislatively empowered to force a trader to provide a consumer with redress

- The court or tribunal is the agency to determine compensation. In this regard, **QCAT determines consumer/trader disputes up to \$25,000 and motor vehicle disputes up to \$100,000. Local Magistrate courts can determine matters over \$100,000** Court or tribunal contact information is to be provided to the consumer
- The OFT **will not** accept offers of CASH redress on behalf of a consumer
- Consumers can **seek independent legal advice** about any entitlements. For some consumers, seeking legal advice can be an expense they cannot afford. In this regard, information and contact details for **free and affordable legal entities such as Legal Aid Queensland or the Queensland Law Society** can be provided to consumers

7.2.2 Conciliation advice to traders

- The OFT is only acting in an impartial role during conciliation and that conciliation is undertaken in an effort to resolve a matter and/or to explore what has happened so the trader may review its processes if required
- The decision to provide redress is entirely up to the trader
- If redress is offered, the OFT will not accept offers of CASH redress from a trader

7.2.3 Redress by cheque or money order

Where redress is negotiated, the redress is transacted electronically or personally between the consumer and the trader. In some, instances the consumer or trader may want redress to be actioned through the OFT. In these cases, **only cheques or money orders** payable to the consumer will be considered and if accepted, actioned by the case assessment unit via internal processes.

A copy of the cheque or money order and receipt acknowledgments are to be placed on the case file **before** the cheque or money order is sent to the consumer by **registered post** or in some cases, handed to the consumer.

7.2.4 Redress during an investigation



Do not request a consumer to withdraw their complaint if redress has been provided. The withdrawal of a complaint may affect the credibility of the complainant if, for any reason, the matter happens to proceed to court or tribunal action.



At no time should an OFT officer indicate, infer or otherwise suggest to a trader that the payment of redress or performance of some other goodwill action will resolve a matter of non-compliance.

7.3 EDUCATION

The OFT is committed to assisting industry participants comply with their regulatory obligations. Therefore, where it appears a trader may have made an honest mistake in its business dealings, or where a lack of legislative knowledge is evident, trader education via a telephone call, educational or compliance advice letter or location visit should be considered.

The aim of an education is to discuss a trader's business practice requirements under relevant legislation and to provide guidance and resource information to assist traders to achieve compliance. OFT officers must not advise traders how to run the practical side of their business. For example, what type of business software they should use?

If during a location visit, serious or multiple breaches of legislation are identified, the trader's activity record can be **changed to a compliance check** instead of an educational visit. In these instances, a matter which started out as a non-enforcement matter may require a category upgrade. If this appears to be the case, OFT officers must seek assistance or advice from their direct senior officer on upgrading the matter to an investigation.

7.4 COMPLIANCE CHECK

Where there may be evidence of non-compliance, noticeable emerging issues and/or trends, or heightened media or public interest in a particular issue/industry, a compliance check of the trader can be undertaken directly. Alternatively, a spot check of the trader may be scheduled into OFT's annual Proactive Regulation of Industry and Marketplace Entities (PRIME) program.

The PRIME program provides for scheduled and non-scheduled proactive compliance checks which are key to the OFT's compliance monitoring program. Each year, the OFT conducts compliance checks of traders within identified industry sectors regulated by the OFT. Additionally, traders occupying the common marketplace, are targeted to ensure they comply with and fulfil their consumer obligations under legislation administered by the OFT, in particular the ACL. The PRIME provides an overview of how PRIME spot check operations work and provides OFT officers with instruction on performing spot checks.

If serious or multiple breaches of legislation are identified during a spot check, the officer can note the matter for further inquiry and a possible category upgrade. In these cases, the OFT officer must seek advice from their direct senior officer on upgrading the matter to an investigation.

The [Compliance check policy](#) defines OFT's compliance check objective.

7.4.1 Internally generated compliance matters

The OFT's PRIME activities may result in increased detection of possible breaches requiring investigation. Where this is evident, case assessment will also be applied. There will however, be instances where action may need to be taken immediately (e.g. to seize evidence), before a formal assessment is undertaken. In these circumstances the evidence should be secured and case assessment should be applied as soon as reasonably practicable thereafter.



All action including the outcome of a matter must be recorded in MACS. Non-enforcement files can be finalised based on a review outcome signed off by a senior officer.



8 INVESTIGATION OVERVIEW

There is no single correct way of investigating a matter. Rather, there may be a range of valid approaches. The key requirements for any decision about how to deal with a matter, including a decision to take **no** action, are to consider if any OFT action will be:

- robust, justifiable, accountable and transparent
- proportionate to the nature of the complaint
- capable of withstanding scrutiny
- responsive to any issues identified

8.1 INVESTIGATION PRINCIPLES

The OFT's investigation principles are as follows:

- Category 0 to 3 matters will be investigated
- The focus of inquiry will be on obtaining the facts and consideration of evidence with a view to taking enforcement action if necessary
- The principles of natural justice will be afforded to all parties
- All parties involved in the process will be treated with respect and courtesy
- The inquiry process will be accurately documented in a timely manner
- Payment of redress by a trader will not affect or impede the investigation process
- OFT officers will educate and inform traders and consumers alike during the investigation process, to encourage an equitable and safe marketplace

8.2 INVESTIGATION METHODOLOGY

The OFT's investigation methodology consists of four inter-related stages:

- **Assessment** – A review of all available assessed information pertaining to the matter is required before the investigation begins
- **Planning** – An investigation case plan must be created. The CPRM tool provides a case plan document for OFT officer use. A case plan ensures the investigation stays on track and an accountable process is followed. Effective planning will:
 - ensure a methodical and professional investigation
 - identify all resources required
 - identify all possible sources of evidence for consideration
 - eliminate or minimise opportunities for people to remove, destroy or alter evidence
- **Action** – Actioning the case plan allows for completing tasks and documenting the results
- **Review** – The investigation will be **reviewed on an ongoing basis**. See Chapter 5 for review requirements.

8.3 AVENUES OF INVESTIGATION

It is critical to identify the scope of inquiries required to be undertaken. In some cases, it may be necessary to broaden the scope of inquiries. This may be the case where there is a potential for high consumer detriment, multiple consumers affected, high public profile attraction or where the level of alleged misconduct is far greater than first considered.

8.4 INTERVIEWS AND STATEMENTS

[Interviews](#) are informal or formal conversations to uncover key facts and provide an opportunity for interviewees to give their account of events and/or respond to allegations to satisfy procedural fairness.



Interviews can be recorded to provide impartial, accurate and contemporaneous evidence of a conversation. It protects both the OFT officer and the interviewee from vexatious and false allegations and assists if memories fail.

[Statements](#) are a written testimony by a person relevant to an incident and should capture details of a matter. All information obtained from individuals which may be required to justify enforcement action before a court or tribunal, is to be recorded in statement format.

8.5 EVIDENCE

[Evidence](#) is the testimony, documents, exhibits and other information that will prove the facts of a matter. Any evidence identified should be considered an exhibit for possible use during court or tribunal proceedings. For this reason, evidence must be collected, recorded and secured in accordance with OFT's *Evidence (exhibit) and property handling procedure*.

8.6 ENFORCEMENT STRATEGY

There are a range of enforcement tools and remedies available under relevant legislation to achieve trader and marketplace compliance. The more serious the alleged breach the stronger the enforcement action. The key objective is to eliminate and deter serious non-compliant behaviour while encouraging traders to acknowledge misconduct and apply corrective action.

Where previous low-level non-compliance is established with education or lower level enforcement action previously taken against a trader (e.g. official warning notice or infringement notice), it may be necessary to escalate enforcement action where further contraventions are evident (e.g. An undertaking or court or tribunal action).

Where it is determined there are multiple sections of legislation breached, the overall conduct of the entity is considered. Each offence must be identified and considered both individually and holistically.

[Chapter 13](#) of this manual outlines available enforcement options.

8.7 FINALISING THE INVESTIGATION

Once a matter is deemed for investigation, the inspector must complete the case even if no breach is determined. The investigation **cannot** be returned to the assessment team for finalisation.

An [investigation summary](#) must be prepared as soon as practicable after finishing an investigation or earlier if directed by a senior officer. The investigation summary is an important document as it is the OFT's record of the inquiry and may be subject to outside scrutiny by an accountable agency such as the Ombudsman or the Crime and Corruption Commission.

All aspects of an investigation from receipt of a matter to finalisation **MUST** be entered into the MACS system. The closure of an investigation file must be approved by a senior officer.



9 MANAGING AN INVESTIGATION

9.1 UPON RECEIPT OF AN INVESTIGATION FILE

When a matter is referred for investigation, it will be allocated to an inspector within CARTA, Marketplace and Financial Investigations, Major Investigations or a regional office. The receiving inspector will review and update the investigator referral information in MACS and **confirm the assessment criteria**.



It is **IMPERATIVE** inspectors immediately review and keep up to date, the **statute barred date** for each alleged offence in MACS. The statute bar date calculator in the [CPRM tool](#) can be used for this purpose to ensure accurate calculation and consistency with MACS. Use of the correct statute bar date/s helps ensure sound case planning and timely enforcement action.

At this time, inspectors may wish to consider the assessed categorisation of a matter against the [Compliance Offence Schedules](#) created for specific legislation administered by the OFT. The schedules provide a categorisation **guide only** for specific offences and may not be appropriate if other concerning factors or multiple offences are alleged.

If the inspector believes any of the assessment criteria requires amendment, approval to change the criteria must be sought from their immediate senior officer. If approved, the inspector must update MACS accordingly.

9.1.1 Change in assessment – No breach

Where an investigation reveals there is no evidence to support a breach, the inspector must finalise the file in accordance with this manual. The file is not to be returned to the assessment area for finalisation.

9.1.2 Involvement with other agencies

Consideration should also be given to any proposed or current involvement by other enforcement and regulatory agencies (For example, the Australian Competition and Consumer Commission or other State or Territory consumer affair agencies, Queensland Building and Construction Commission, ASIC, QPS, etc.).

Lead agency status must be observed where a protocol exists (see [section 6.3.1](#)). In the absence of such a protocol, the investigation should be deferred if another agency is known to be investigating a more serious breach against the trader (e.g. fraud). Cooperation with the agency is vital to ensure the interests of the Queensland Government are protected. Where there is uncertainty of whether a protocol is in place, inspectors can consult their senior officer.

Where the trader is a national entity and there appears to be concerns of breaches of the ACL, the Australian Consumer Law Intelligence Network Knowledge (ACLINK) GovTEAMS system can be accessed to see if the trader is being investigated by other regulators.

GovTEAMS is a secure database providing a search function and intelligence sharing function between fair trading agencies. All OFT inspectors should be aware of GovTEAMS and have access to the database. The [GovTEAMS user access request form](#) is available on OFT's intranet. Inspectors who do not have access to GovTEAMS can put a request into OFT's GovTEAMS jurisdictional administrator located in OFT's Program Strategy and Development unit, who will add inspectors to the GovTEAMS community. Inspectors will then receive an email providing instruction on registering for access to the community.



If another agency is investigating the trader, the inspector must inform their senior officer and discuss advising the agency of the complaint received by OFT and any proposed course of action.

9.1.3 Contact with a consumer as the complainant

The complainant must be contacted within **5 business days** from receipt of the file to:

- confirm the inspector's title and contact details
- confirm the OFT's investigative role
- confirm the issues raised and where relevant, the allegations for investigation
- ascertain any relevant background information and facts
- confirm matters for which the OFT does not have jurisdictional authority and provide alternative agency information if not already provided by the case assessment unit
- request further information as is necessary from the complainant
- determine the complainant's willingness to support the allegations, including provision of a witness statement and attendance in court
- advise the complainant of the proposed course of action based on initial information provided and the proposed activities to be undertaken
- the estimated timeframe for completion

Any discussions held and decisions made must be recorded in MACS notes.

9.2 ELECTRONIC FILE AND CASE PLANNING TOOL

Once satisfied the complaint information is correct in MACS, the inspector will:

- for Brisbane inspectors, confirm an electronic investigation file has been created by CARTA.
- for regional inspectors, create an **electronic file** in the appropriate business drive
- (for all inspectors) create a **case file** using the OFT's [CPRM tool](#) and save it into the electronic investigation file.
- for trust account investigations, use the case file created and uploaded to MACS by the Trust Account officer.

The CPRM tool is to be used to ensure a consistent and transparent process for recording information is adopted throughout OFT. Officers can seek an exemption from using the tool, for low level investigations, from the divisional Director. The CPRM tool templates provide prompts to ensure most required information and documentation for a case file is recorded and all avenues of an investigation are covered. The CPRM tool provides tabs for the creation of:

- A case plan overview
- Case instructions
- File reviews
- Evidence matrix/s
- Assessment forms (Eg. TAARIA) used by the Trust Accounts Unit
- File index
- Complainants
- Witnesses
- Checklists
- Statutory barred calculator

In order to meet OFT's accountability and review obligations under the CEP, OFT officers must complete a **case plan**, conduct **file reviews** and complete case file checks, including a final file **checklist**, on actions taken during the management of a case. The CPRM tool provides a template for these requirements.



The other CPRM templates can be used where appropriate given the circumstances of the case. Locally developed templates and forms **should not** be used unless CPRM templates are not suitable.

9.3 PLANNING AN INVESTIGATION

Once all checks and processes are completed and an electronic file and a case file created, a **case plan** can be created. If the matter relates to a trust account investigation, a CPRM case file will have already been created by the Trust Account officer. Inspectors can use the initial CPRM case file already uploaded in MACS to create the case plan and continue using the same CPRM case file throughout the investigation.

9.3.1 Developing a case plan

The case plan is the foundation for all investigation activity. It defines what inspectors do, when and where they do it and why they do it. Its primary purpose is to keep the investigation focused and on time. For best results, the case plan should progress from general input and requirements and be **updated regularly** to expand on specific requirements and actions taken.

A case plan and its coordinated activities should focus on the following:

- What legislation has been breached?
- What evidence is needed, or is to be obtained, to prove a breach has occurred?
- How to obtain and secure the evidence in a timely manner?
- How to negate the loss or tampering of evidence before it is seized?
- What is the potential for the issue to become serious and attract significant enforcement or decline to a minor matter with minor enforcement action?

The case plan is a living document that needs to be kept up to date. Officers must think broadly about all possible sources of information, available evidence and avenues of investigation.

Officers should continually review the results of actions completed and evidence gathered as this may identify other lines of enquiry or breaches to be considered. Conversely, there may be developments which make it no longer viable to continue the investigation. Any significant developments should be discussed and agreed with a senior officer and if agreed, incorporated into the case plan.

Investigations rarely proceed as originally planned. Therefore, the case plan should be revised each time new information emerges to determine if a change in plan is required. **The facts must dictate the plan.**

9.3.2 Components of a good case plan

The case plan is the road map for the investigation. An effective case plan includes:

- the name of all parties to the investigation
- an overview and background of the case including how the information came to OFT's attention
- general details given by the source of the initial information
- details of any initial inquiries
- definition of the scope and purpose of the investigation
- confirmation the matter falls within statute of limitations
- definition of the scope and nature of evidence gathered or required utilising an **evidence matrix**
- activities and tasks to be undertaken and provide deadlines for completion.
- identify who is responsible for performing each task
- identify multi-jurisdictional or other agency involvement
- outline known or potential risks



- outline possible offences
- note likely or possible defences
- outline relevant legislation
- provide a launching point to begin the investigation
- monthly updates to the complainant
- witness information
- regular self-reviews and senior officer reviews of the case and the investigation process
- completion checklist

9.4 SCOPE OF INQUIRIES DURING AN INVESTIGATION

It may be necessary to broaden the scope of inquiries such as where there is a potential for high consumer detriment, multiple consumers affected, high public profile attraction or media attention or where the level of alleged misconduct is far greater than first considered.

Inspectors must discuss broadening inquiries with their senior officer in the first instance. Resource implications around the additional work balanced against the public interest is to be taken into consideration. This type of decision should be made on a case by case basis.

9.4.1 Considering the allegations

A single complaint may contain a number of separate allegations which need to be dealt with individually. The case plan should include the allegations to be investigated and will address the following aspects of each allegation:

- **The Evidence** (facts) – All elements of the alleged offence must be established as proof of the offence. These elements include the:
 - time/date of the alleged offence
 - place the alleged offence occurred
 - identity of the person/s alleged to have committed the offence
 - elements (requirements) of any related and/or specific legislation
 - facts or evidence (documents/objects) that should exist or might be obtained to prove the elements.
- **Witnesses** – Inspectors consider what evidence is required to test the allegations and how to obtain that evidence. It compels inspectors to weigh the advantages and disadvantages of different methods of gaining evidence from people who might have witnessed events, created documents or handled things.
- **No witness required** – A matter may not involve or require witnesses to prove an offence has occurred. For example, where specific documentation required to be used by a trader under legislation administered by OFT is incorrect or non-existent.
- **Confidentiality issues/other risks** – The inspector's immediate senior officer must be made aware of issues or risks which may change the scope of investigation:
 - the involvement of a public official
 - if documents may be altered or destroyed by a person relevant to the matter
 - people aware of the matter might convey information to others compromising the investigation
 - the media may take an interest if the matter comes to their attention
 - there may be a conflict of interest involved
- **Additional Resources** – Estimate additional resources that may be needed to successfully conduct the investigation. For example:
 - specific people/skills required
 - additional persons required (for searches etc.)
 - computer facilities
 - tape or video recording equipment
 - storage facilities




- vehicles

OFT officers may wish to use the CPRM tool templates specifically created for recording evidence, witnesses and additional resources.

9.4.2 Request for Intelligence

Along with information that may be gathered from MACS, GovTEAMS and other agencies as noted at section 9.1.2, the OFT's Intelligence Unit (IU) provides specialist support to assist Inspectors in providing additional evidence in an effort to supplement or further an investigation. IU staff have specialist intelligence expertise to provide information and advice through the authorised access of external databases, information systems and the use of non-conventional investigative methods.

Where Inspectors require specific information on a target/s or broader information that is otherwise unable to be gained through conventional investigative methodology, an [intelligence request form](#) can be submitted to the IU. All requests for intelligence forms **MUST** be submitted to OFTIntel@justice.qld.gov.au and all requests **MUST** have the approval of a band level 3 authority (manager) or higher. All fields are to be completed with additional information scanned and forwarded to the OFTIntel mailbox with the completed intelligence request form.

 Inspectors are to consider the IU's Intelligence flow chart protocols (both [generic](#) and specific to the [tattoo industry](#)) **prior** to submitting a request.

9.4.3 Tasks and timeframes

Timeframes for completion of a matter, commonly known as 'file target date', are linked to the case assessment categories. The general principle is higher risk categories (0, 1 and 2) will be more resource intensive than lower risk Categories (3 and 4). [Annexure C](#) notes the timeframes for the OFT to complete an inquiry into a matter.

Inspectors must aim to complete all tasks within the applicable category time frames, although this may not always be achievable. Any tasks or inquiries past the target date are to be completed in the shortest possible time after the allocated timeframe.

Consideration should also be given to **statute barred dates** and legislative timeframes for commencement of enforcement action which should have already been determined.

9.4.4 Formulating a plan for individual tasks

Individual tasks must be incorporated in the planning stage of an inquiry with a timeframe applied to each task. The aim is to complete individual tasks on time so the investigation can be completed within its category timeframe.

Often one task cannot commence until a previous task is completed. Delays in completing tasks can ultimately delay the entire investigation and its completion date. Therefore, it is important to achieve each task within the timeframe as much as possible.

Setting individual task timeframes can be useful in helping to manage an investigation. Tasks and timeframes should be documented wherever possible and include:

- specific tasks to be performed (warrant, spot check, interviews etc.)
- timeframes for task completion
- prioritisation of tasks
- progress of a matter
- readjustment of timeframes for unexpected obstacles

The CPRM case plan document provides for all of the above and allows OFT officers to note tasks completed ahead of time permitting other tasks to be completed early, or see where extra time to be spend on other tasks



9.5 CLAIM FUND INVESTIGATIONS

In certain circumstances the Manager, C&R may request an investigation into a claim lodged against the claim fund where it is necessary to determine what actually happened and obtain substantiating evidence. The most likely reason for C&R to request an investigation is where:

- a claim could be valid depending on whether the claimant's allegations are substantiated
- the evidence provided to date is either non-existent or inconclusive
- an investigation into the claimant's allegations would be of assistance

Upon request, the inspector must provide the Manager, C&R (as delegate of the CE) with an Inspector's Report about the facts of the matter within 120 business days. To assist the inspector, C&R will provide the appropriate C&R report documentation and outline the expectations for the report. The final Inspector's reports must be co-signed by the inspector's manager and contain at the minimum:

- an itemised list of all evidence obtained during the investigation
- a chronology of all relevant facts established from the evidence, and
- copies of all evidence obtained including but not limited to:
 - witness statements obtained after interviewing involved parties
 - search results from government databases,
 - bank statements,
 - emails, and
 - other documentary evidence

Inspector's Reports must be objective, contain facts only, be free from bias and must not reference documents or details which are subject to legal privilege, such as legal advice or unpublished policies.

C&R is required to provide the Inspector's Report to the claimants and respondents of the claim for their review and response. A copy of the report is also provided to QCAT if the matter is before the Tribunal. If this occurs, the report's author (the inspector) and/or co-signing manager, may be called to give evidence and may be cross-examined. In these circumstances, inspectors should refrain from offering opinions or speculation or else keep it to the absolute minimum necessary and based on the relevant evidence.



When speaking with a claimant at any time during an investigation, **under no circumstances** shall the inspector advise them about the success or possible outcome of their claim or any monetary amount of the claim. **Communication in this regard is the sole responsibility of the Manager C&R.**

Regular liaison between OFT inspectors and C&R officers is key to ensuring inquiries subject to a claim and the claim itself are processed efficiently and in a timely manner.

9.5.1 Where a claim is NOT valid

Where there is no evidence to validate a claim, C&R will advise the complainant directly. C&R must also advise the inspector the matter does not provide for a claimable offence.



While a claim may not be valid, this does not negate the OFT from investigating any potential breaches of OFT legislation. In this regard, the investigation will continue. The inspector will ensure regular contact with the complainant regarding the investigation until a final outcome can be advised.

9.6 FILE NOTES THROUGHOUT THE INVESTIGATION

From beginning to end, along with regular reviews, accurate and comprehensive MACS file notes, electronic file information (including case plan updates) are essential to the proper



conduct of an investigation. Not only do these actions assist the inspector to record the investigation's progress, but are vital if the investigation file is passed onto another officer to finalise.

For the purpose of all internal and external review requirements it is imperative the OFT is able to demonstrate that all lines of inquiry were followed and all available evidence adequately gathered, collated and assessed.

As a minimum, the file notes should include the date and time an activity was undertaken and the date and time the contemporaneous file note was made. File notes should contain details about:

- all contact made with the complainant and issues discussed
- all contact made with trader – when and where it occurred and what was said including a reference to where any tape or transcript of an interview is located
- details of other persons contacted, contact details and a synopsis of any discussions held
- evidence collected (e.g. documents, other items) – where the evidence came from and how it was obtained (e.g. permission or consent, warrant or using powers) where it is stored and to whom/when it should be returned
- significant incidents/events during the course of investigation, especially, any occurrences of a breach
- decisions made that affect the course or outcome of an investigation
- redress obtained – how much, how it came about and that permission was sought from the inspector's senior officer to obtain the redress
- the outcome of the investigation and the factors and reasons for that outcome
- telephone call to trader to advise of outcome of a matter where no consumer complainant is involved. For example, an audit or trust account breach



10 ACTIONING AN INVESTIGATION CASE PLAN

Once the initial case plan has been created, inspectors must complete the tasks outlined in the case plan. Inspectors are to ensure regular reviews of their progress are conducted to determine if a change in plan is required especially when new information emerges.

10.1 TRADER CONTACT

Where a trader is suspected of having breached OFT legislation, the allegation should be put to the trader to ensure procedural fairness. Inspectors may need to make initial inquiries or research material before contacting the trader and therefore must gauge the most appropriate time during the inquiry to contact the trader. When contact does occur:

- the trader's response must be recorded by the use of contemporaneous notes
- if the matter is serious, the trader should be invited to participate in a formal interview or alternatively be requested to supply a written formal statement

Where a matter is complex, the complainant and the trader may be contacted numerous times. All contact with any party during an inquiry must be noted in MACS file notes.

10.2 ENTRY, SEARCH AND SEIZURE

The case plan may require inspectors to enter premises to conduct searches to obtain information and/or evidence. When considering these actions, inspectors must consult the OFT's [Entry, search and seizure policy](#) which includes advice on:

- Legislative requirements for entry, search and seizure
- Inspectors powers after entry
- Searching people
- Obstruction and damage during entry search and seizure
- Power to stop or move a vehicle
- Receipting of seized things

10.2.1 Entry under warrant

In cases where a warrant is required, inspectors must consult the OFT's [Applying for and actioning a warrant procedure](#). The procedure notes why a warrant should be issued and:

- the procedure for applying for a warrant
- preparing to execute a warrant
- safety considerations

10.3 OBTAINING EVIDENCE

As noted at section 2.7 Elements of an offence, the prosecution must present credible and sufficient evidence to prove **beyond a reasonable doubt** each element of an offence.

Be it a minor offence attracting low level enforcement action or a serious matter attracting prosecution action, inspectors must not waiver from obtaining proof of the offence beyond reasonable doubt. Doing so, increases the OFT's credibility and the chance of success should a person decide to contest an enforcement action through a court or tribunal. Accordingly, inspectors must work on the basis that **every matter** *may* be heard in a court or tribunal.

Inspectors must gather all the available relevant evidence. Some evidence collected during an inquiry may not be admissible as evidence in court, but may still provide useful as background information about the circumstances of an alleged offence.



10.3.1 Rules of evidence

The rules of evidence determine what kind of evidence a court or tribunal will accept and how much evidence the court requires to prove a case. The rules also determine how evidence is presented in court and who can or must give evidence to prove a case.

These rules are generally set out by the [Evidence Act 1977](#). Other Acts setting out rules of evidence include the [Justices Act 1886](#) (Justices Act), the [Penalties and Sentences Act 1992](#) and the Code.

Some legislation provides for evidentiary provisions or aids. These help to reduce the amount of resources inspectors apply to an inquiry. For example, part 2, division 1 of the [Fair Trading Inspectors Act 2014](#) and section 112 (3) of the [FTA](#) allow a certificate signed by the CE stating the facts of a matter, can itself be used as evidence. Therefore, inspectors should consider legislative provisions for relaxation of the rules of evidence.

10.4 THINGS TO CONSIDER WHEN OBTAINING EVIDENCE

10.4.1 When is evidence required?

Evidence is required to prove an offence beyond reasonable doubt. A court establishes the facts of a matter by considering the evidence, including:

- all witnesses' testimony, including statements
- all witnesses' credibility
- all items registered as evidence or exhibits

Inspectors must therefore gather and present evidence in a professional and credible manner.

10.4.2 Onus of proof

The onus of proof (or burden of proof) refers to the obligation to prove a matter. A person is presumed innocent until proven guilty. Therefore, the onus of proof rests with the prosecution in all criminal matters. The defendant need do nothing but require the prosecution to prove its case.

When the defendant wishes to raise a defence:

- the defendant (or their lawyer) must raise the matter of the defence
- the prosecution is responsible for negating the defences
- the prosecution must still completely prove the substance of the case
- the relevant legislation may exclude a particular defence from being applied to a case

The only exception to this relates to any defences or statutory deeming provisions. The defendant may have to provide evidence to deal with statutory deeming provisions (regulations or legislation on how something is to be treated or regarded). This may be provided in an interview and not necessarily at a subsequent hearing.

10.4.3 Standard of proof

The term 'proof' does not necessarily mean conclusive proof, but sets a standard to determine how likely an element is to be true. This standard varies depending on the type of case. There are 2 common standards of proof which are applied in OFT matters, they are:

- Proof *beyond a reasonable doubt*
- Proof on the *balance of probabilities*

The prosecution must prove its case to the standard of beyond a reasonable doubt:

- in most criminal matters
- for all elements of a particular offence



- in negating any defences

It is a very high standard of proof, but it does not necessarily mean no doubt. There is no single legal definition of 'reasonable'. Generally, a jury considers the facts of the case to determine what is reasonable. The presiding judge or magistrate performs this in cases without a jury.

The standard of proof on the balance of probability:

- applies to matters before a civil court or QCAT
- applies in criminal matters where the onus of proof lies with the defence. The exception to this is the defence of 'mistake of fact' which must be proved beyond a reasonable doubt.



Ultimately, the OFT's litigation prosecutor is allocated from the DJAG legal advice and advocacy lawyer pool and will decide what evidence will be relied upon in a particular case.

10.5 TYPES OF EVIDENCE

How evidence is weighted judicially is a question of fact dependant on if a witness is credible, if evidence is clear and how evidence was obtained. Different types of evidence are weighted differently.

10.5.1 Primary or secondary evidence

Primary evidence is an original version of a document or real object produced as evidence. This is considered to be best evidence.

Secondary evidence is any other evidence less weighted than primary evidence. For example, secondary evidence may be a witness's oral evidence about the contents of a lost document.

10.5.2 Conclusive or prima facie evidence

Conclusive evidence is evidence a court recognises as full proof of a fact. For example, physically producing the number plate '123 ABC' would be conclusive evidence the number plate 123 ABC actually exists. Conclusive evidence negates all contrary evidence.

Prima facie evidence proves a fact on **face value**, but may be negated by contrary evidence. The term 'prima facie' means conclusive on face value, however there may be underlying circumstances or information that could change the meaning or context of the evidence.

For example, a photograph of a vehicle showing the number plate '123 ABC' may be considered prima facie evidence the vehicle is registered as '123 ABC'. However, other evidence may exist to show the vehicle was not registered or was registered with a different registration number.

10.5.3 Direct or indirect evidence

Direct evidence is evidence of a fact that if believed, proves conclusive existence of the fact without inference or presumption. For example:

- a witness testifies having actually perceived with their own senses
- takes the form of a primary document or real object

Indirect evidence is circumstantial or hearsay evidence.

10.5.4 Circumstantial evidence

Circumstantial evidence is a series of closely associated facts (such as information or testimony) that allow conclusions to be drawn which indirectly establish the existence or non-



existence of a fact or an event to be proven. There needs to be **at least two** pieces of circumstantial evidence corroborating each other. It would be unlikely for the OFT to continue a case based on one piece of circumstantial evidence.

10.6 ADMISSIBLE EVIDENCE

Evidence can be ruled admissible if:

- it proves or disproves an element of an offence, or some part of it
- it follows the rules of evidence
- it does not follow the rules of evidence (such as hearsay) but there are extraordinary circumstances that would allow it to be admitted

Forms of admissible evidence - Evidence comes in many forms, but should be produced in court through a witness who will take the stand and testify about the evidence.

10.6.1 Oral evidence

This is the testimony a witness gives under oath or via an affirmation in court. As court proceedings tend to be conducted sometime after an event a witness may become vague on the facts of the matter. Inspectors should therefore:

- obtain a detailed statement from each witness as soon as possible after the offence
- give a witness a copy of their statement prior to court to refresh their memory

10.6.2 Real evidence

Material objects produced for the court are classed as real evidence. Real evidence includes:

- written statements
- items found or seized at the scene
- photographs or sketches
- results of tests, surveys etc.
- electronic or digital evidence. For example, digital photographs and audio or video recordings

In the case of voice recordings, the recorded words constitute a person's evidence. The **original** recording must be produced in proceedings.

10.6.3 Documentary evidence

Documentary evidence includes:

- permits or licences
- contracts and receipts
- work system documentation
- company policies and procedures
- company records
- account records
- letters or postal records
- photocopies of the above documents if originals are not available

Courts usually require original documentation. However, in most circumstances, copies may be tendered if accompanied by a satisfactory explanation of why the original is not provided.

When using a copy of a document, inspectors must establish:

- how the copy was obtained
- from whom it was obtained
- under what circumstances it was obtained

The owner of the original document should be asked to confirm that it is a true copy. This is to be done in writing on the copy.



A **summary document** may also be used in place of large or complex documents. The *Evidence Act 1977* allows that a copy can be tendered in court where:

- the copy forms part of the records kept by a current or former business, or
- the document is a public document and is printed by a government printer
- Certified extracts can be obtained when using part of a larger document or database.

An inspector should persist in obtaining a required document until they receive the document or they are given a reasonable excuse for non-provision.

A document is also admissible when the defendant admits its contents.

10.6.4 Computer records

Section 95 of the [Evidence Act 1977](#) states evidence gained from computer records must be accompanied by an [Evidence Act Certificate](#). The certificate outlines the way the records were produced and the parameters of any search function undertaken. This also applies to bank or other financial statements produced by a computer.

10.7 INADMISSIBLE EVIDENCE (EXCEPT UNDER CERTAIN CIRCUMSTANCES)

Evidence likely to be ruled inadmissible is evidence:

- unlawfully obtained
- unfairly obtained
- unfairly prejudicial to the defendant
- not credible

Evidence obtained unfairly or unlawfully is not automatically inadmissible, but judges and magistrates have common law discretion to exclude this evidence. This is reinforced by section 130 of the [Evidence Act 1977](#), which provides that:

- *'Nothing in this Act derogates from the power of the court in a criminal proceeding to exclude evidence if the court is satisfied that it would be unfair to the person charged to admit that evidence'.*

The court may reprimand inspectors for presenting unfairly gained evidence. Therefore, all evidence must be transparent, genuine and fair.

10.7.1 Hearsay

Hearsay is evidence of a statement made to a witness by another party. This is usually inadmissible, as the other party should present this evidence to the court themselves. There are certain instances where hearsay may be admissible. This is a complex area of the law. The OFT's legal advisor can be consulted in this matter.

10.7.2 Previous OFT enforcement history

Previous OFT enforcement is not admissible as evidence to prove a breach. However, can be referred to at sentencing. If considering this action, the defendant must be served a notice prior to the court hearing advising them of the fact.

10.7.3 Character (defendant only)

Evidence about the character of a defendant is not normally admissible however, may be admitted if the defendant makes it an issue. Any known information about a defendant's character, particularly about their honesty or truthfulness, should be included in court briefs.



10.7.4 Opinion

A witness can only testify to facts within their knowledge. Opinions about a person or an incident are irrelevant. Thus, a witness is generally limited to giving testimony about matters they are aware of because of their own senses. This applies equally to inspectors.

10.8 OTHER FORMS OF EVIDENCE

10.8.1 Witness

A witness is anyone, other than the suspect, who is able to provide admissible information about a matter. They will have firsthand knowledge or experience, or have been told directly about circumstances surrounding a matter. A witness may be:

- any actual eyewitness
- a party to the offence (For example, a victim)
- a person who has had dealings with a suspect
- a person who has been directly told by the suspect of the details of an offence
- inspectors or other government employees involved in the matter
- any other person who has particular **sound knowledge** of or surrounding the matter

10.8.2 Corroboration

Corroboration is independent evidence by one witness confirming the evidence of another witness. For example, an inspector may corroborate statements made by a defendant if they were present at the time the statement was made. A witness's testimony may also be corroborated by real or documentary evidence.

10.8.3 Expert witness

An expert witness:

- has qualifications or experience to assist in determining the facts of a situation
- must have their expertise proven to the satisfaction of the court
- owes their first duty to the court and not to either party

The court has the discretion whether to allow the expert to give evidence in a case and if that person is actually considered to be an expert who can give opinions about a matter in question. Experts commonly give evidence in cases involving questions of scientific fact. The prosecution must be advised if the defence intends to call an expert witness.

It is the responsibility of the inspector to research and provide a list of possible expert witnesses confirming the benefits to the case.

10.8.4 Unfavourable and adverse witnesses (hostile witnesses)

For a variety of reasons, not all witnesses say what is in their statements, or even tell the truth in their evidence during proceedings. This may mean another witness has to be called to supplement the person's evidence and test the credibility of the witness. Inspectors must alert prosecutors before a hearing takes place if they know a witness may prove hostile.

10.9 ASSESSMENT OF EVIDENCE

The assessment of evidence is a crucial part of the compliance and enforcement process. The objective of an investigation is to obtain the facts and to gather evidence to determine if taking enforcement action is warranted or appropriate. When considering evidence, the following assessment criteria should be taken into account:

- Availability, competence and credibility of witnesses
- Manner in which evidence was obtained
- Availability of independent and corroborate evidence



- Availability of competent and admissible evidence
- Sufficient weight of evidence behind each element of an offence
- Trader has had an opportunity to respond to an allegation(s)
- Defence provisions available to, or indicated by, the trader
- Sufficiency of evidence

There may be insufficient evidence to support the alleged substantive breach. However, sufficient evidence may be gained to support enforcement action for additional breaches. Challenging if sufficient evidence exists should be done regularly throughout the review process to ensure matters continue to be investigated effectively and efficiently.

10.9.1 Expert analysis

Evidence may require expert analysis or testing. Inspectors must ensure items are always personally delivered to the expert to maintain continuity. The only exception to this rule is if items are to be examined overseas. In these cases, inspectors must ensure items are mailed in a tamperproof form. Experts must follow their established control procedures for storing and handling exhibits and samples. If they do not have control procedures, the principles outlined in OFT's [Evidence \(exhibit\) and property handling procedure](#) should be incorporated into storing and handling the exhibits. The expert's report must include:

- date and time the exhibit was received by the expert
- name of person providing the exhibit
- exhibit labels with details to identify which exhibits were tested or examined

10.10 INSUFFICIENT EVIDENCE

If there is insufficient evidence the investigation should be reviewed to identify other/additional avenues of inquiry that may reveal further facts to help decide whether to continue the investigation. If these avenues of inquiry exist, they should be followed. An investigation may be closed at any time if there is insufficient evidence to take further action and continued exploration of the matter cannot reasonably be justified. At this time, consideration can be given to implementing non-enforcement action as noted at Chapter 7. The inspector dealing with the investigation must close the file. It is not to be returned to the initial assessment officer for closure.

10.11 MANAGING EVIDENCE GATHERED

Any evidence identified must be considered an exhibit for possible use during proceedings. For this reason, documentary or other evidence must be collected, recorded, secured and returned or destroyed in accordance with OFT's *Evidence (exhibit) and property handling procedure*.

Once a case is finalised, it is the **responsibility of the inspector** handling the case to ensure evidence is properly returned, retained or disposed of at the end of the relevant time period, or where its retention as evidence is no longer necessary. As well as adhering to returning or disposing of evidence in accordance with OFT's internal procedure, inspectors must also consider relevant **legislative provisions which may have requirements for returning or destroying evidence**.

10.12 TRANSFERRING INTO CUSTODY OF A COURT

The OFT retains possession of exhibits unless they are tendered as an exhibit during court proceedings. In these instances, the exhibit will be recorded in the court's property register.





The responsibility of controlling and handling evidence is one of the inspector's most important tasks as it is key in securing a prosecution case. Failing to control or handle evidence lawfully may result in the exclusion of that evidence and jeopardize the final outcome of a case.



11 INTERVIEWS

An interview is a formal conversation between two or more parties. Interviewing is a fundamental skill to uncover key facts and provide the interviewees with an opportunity to deliver their account of events and/or respond to allegations. OFT inspectors can conduct interviews with suspects, witnesses and victims of an event with the ultimate goal being to establish the facts and obtain accurate and reliable evidence.

A court or tribunal may rule that an interview cannot be used as evidence if they believe the interview was not conducted fairly. Therefore, proper interviewing techniques are essential to ensure inspectors do not jeopardise valuable evidence.

11.1 GENERAL RULES OF AN OFT INTERVIEW

Confident interviewing skills come with preparation. Inspectors must make sure they have everything they need for the interview to minimise the risk of people denying, changing or contradicting information they may have already provided to the OFT.

Two OFT inspectors must be present at a suspect interview. A lead inspector and an assisting inspector. The lead inspector must brief the assisting inspector prior to the interview to ensure they are both aware of their roles during interview. Smaller regional offices may require the assistance of a QPS or Office of Liquor and Gaming Regulation officer as two OFT inspectors may not be available.

Witness interviews can be conducted by one inspector unless circumstances dictate it would be more appropriate to have two. For example, where the interviewing inspector is new at conducting interviews or for personal security reasons.

Interviews may be recorded both manually through inspectors' notes and electronically through audio and video recording. These become the 'record of interview'. Inspectors must complete a record of interview for every interview they undertake.

Inspectors with any concerns about conducting an interview should ask an experienced colleague for advice or have them join in an interview as an assistant inspector.

11.2 THE PEACE MODEL FOR INTERVIEWS

The PEACE model provides the structure for an investigative interview. PEACE stands for:

- [Preparation and Planning](#) – occurs before the interview
- [Engage and Explain](#) – occurs during the interview
- [Account, Clarification and Challenge](#) – occurs during the interview
- [Closure](#) – occurs at the end of the interview
- [Evaluation](#) – occurs after the interview



11.3 PREPARATION AND PLANNING

Preparation is one of the most important aspects of effective interviewing and must be carried out whether the interview is with a suspect, witness or victim.

While preparing for an interview, inspectors must:



- gather and review all evidence, including initial interviews/discussions, statements, physical evidence and photographic evidence
- gather as many facts about the interviewee as possible
- identify any relationship between the interviewee and any other relevant individuals
- identify all possible breaches which may have been committed by any party

The following information are key elements of a good interview.

11.3.1 Vulnerable interviewees

Some interviewees may have vulnerabilities making them incapable of fully representing themselves or protecting their interests. In these instances a [support person](#) or a translator may be required to attend an interview. For this reason, they are to be given additional consideration when planning an interview. Vulnerable people include but are not limited to:

- children (OFT will not interview children unless absolutely necessary)
- Aboriginal or Torres Strait Islander people
- people with impaired capacity due to disability
- people with an inability or limited ability to speak or understand the English language
- people who are disadvantaged by cultural, ethnic or religious factors

11.3.2 Elements to prove

Inspectors can identify from an interview what elements of an offence they need to prove and any defence the element might raise. This forms the basis of the topics that need to be covered in any interview. The main points to consider are:

- The intent (mens rea). What was in the suspect's mind?
- Did they commit the wrongdoing?
- The action (actus rea). What did the suspect do?
- The method (modus operandi). How was the wrongdoing committed?

Inspectors must break an alleged offence into its component parts. This helps to ensure all interviews fully cover the points required to prove or disprove an allegation.

11.3.3 The interview plan

The interview plan works in conjunction with the investigation case plan which incorporates the evidence matrix identifying elements to be proven. The most effective way to plan for an interview is to review the case as it stands and create a written Interview plan.

An interview framework for questioning is incorporated into the OFT's [Interview plan and process template](#). The template provides an easy to use format for listing core points to be addressed and the elements to prove an offence. Known evidence and documents to be referred to can be listed for ease of reference when conducting the interview as well as clarification of specific points crucial to the inquiry.

The template removes the need to prepare an exhaustive list of questions by focusing on the identified topics. An inspector should have sufficient knowledge of the investigation to formulate appropriate questions at the right time dependant on responses provided by the interviewee. This will allow for a flexible interview.

Inspectors should also consider in advance:

- If they are likely to deal with all relevant matters in one interview
- How significant the interviewee is to the investigation?
- The potential defences a suspect may employ. It is important that an inspector not only obtain evidence to prove each element of the offence, but also gain evidence to address possible defences.

11.3.4 Practical arrangements

When planning an interview, inspectors should:



- plan with the assistant inspector how the interview will be conducted
- determine how much time they may need to devote to the interview
- ensure all the necessary equipment for the interview is available and operational
- gather all available physical evidence, including statements, photographs, or exhibits
- ensure exhibits being used in the interview are clearly identified
- make alternate arrangements when exhibits cannot be displayed in an interview

11.3.5 The interview location

Witness interviews should ideally take place at the person's home or another suitable place nominated by them to lessen inconvenience to them. If this cannot be arranged a telephone interview can be conducted, or as a last resort questions posed by email.

An inspector should have control over the setting in which a **suspect** interview takes place. An interview should ideally take place at the OFT, in a designated interview room which is:

- private
- free of distractions including:
 - unnecessary files or equipment
 - public address systems
 - other staff
 - windows or gaps in partitions
 - telephones other than an interview room telephone
- properly equipped for interviewing purposes, including electronic recording equipment (if practicable)

It may be necessary to conduct **field interviews**. In these cases, a location that is both private and free from distractions should be chosen. Inspectors should use an audio recording device if practicable. A handwritten record of interview in an official notebook is also acceptable.

A copy of the final interview plan must be checked by the inspector's senior officer and when approved, provided to the assisting inspector prior to any interview.

11.3.6 The interviewee

Not more than one person at a time can be interviewed. The individual needs of the interviewee must be considered when establishing a relationship with that person. This is irrespective of whether the interviewee is a suspect, victim or witness.

When arranging to interview a person, an inspector should:

- confirm if they require an interpreter
- advise of their option to ask a friend, relative, support person or lawyer to be present during the interview
- arrange a suitable time for the interview with consideration of prior appointments of a person's friend, relative, support person or lawyers' prior calendar

A suitable time is generally at the earliest opportunity when all persons invited are available. It should ideally be within one week of initial contact to arrange the interview.

Interviewees may identify or fall into specific groups as listed below and the needs associated with these groups have to be catered for. It is advisable to consult with a senior officer before conducting the interview to ensure a person is appropriately catered for and potential for alleged discrimination is sufficiently managed. Consideration must be given to the following:

11.3.7 Age and gender

Knowing the interviewee's age helps determine:

- the most appropriate time for an interview
- if the person requires a parent, guardian or appropriate adult to be present
- if a younger suspect legally knows right from wrong



Considering the gender of the interviewee may help decide if a particular inspector is the best person to conduct the interview, or influence who the inspector chooses to assist them.

11.3.8 Cultural background and sensitivity issues

These can affect an interview because:

- the inspector may need to adapt the interview style to cater for cultural or religious beliefs which are generally taught to a person from a young age and can influence an interviewee's answers or actions subconsciously
- the interviewee may not understand English sufficiently and require an interpreter
- the interviewee may have a strong regional dialect difficult to understand
- the inspector may misunderstand an interviewee's behaviour and responses
- an interviewee may experience culturally specific issues during the interview process

Under these circumstances an inspector must not begin the interview unless:

- an appropriate support person is present during the interview
- the interviewee has had an opportunity to speak to their support person in private before the interview begins (if practicable)

11.3.9 Physical and mental health

Some interviewees may be vulnerable because of their physical or mental health. Inspectors can become familiar with a person's health conditions by:

- observing the person's behaviour as well as other significant features (these observations, if apparent, should be noted immediately after the interview)
- noting the concerns of others
- advice from the interviewee directly (The interviewee may advise they suffer from a particular physical or mental disability or illness)

If an inspector reasonably believes an interviewee is impaired by a permanent or temporary mental, cognitive, emotional or developmental disability that will affect their ability to comprehend information, exercise judgement, perceive reality, manage their own emotions or control their own behaviour, the inspector must not begin an interview unless:

- an appropriate support person is present during the interview
- the interviewee has had an opportunity to speak to their support person in private before the interview begins (if practicable)

Physical conditions must be considered particularly regarding the location of the interview and the interviewee's ability to attend an interview. An inspector may only become aware *during* an interview that the interviewee has impaired capacity. In these cases, the inspector must immediately suspend the interview and comply with this section before continuing. **AT NO TIME** should a vulnerable interviewee be left on their own.

AT NO TIME is an inspector to be left on their own with an interviewee where there is concern the interviewee has or may have a mental illness.

11.3.10 Educational background

Interviewees with a low level of educational background may not understand the significance of the questions asked and the implications of their answers. Therefore, inspectors must be prepared to rephrase or break down and segment questions into very simple terms to ensure the questions are understood to afford the interviewee proper natural justice. Best practice in this instance is to conduct the interview in the presence of a support person. However, it should be remembered traders should have a reasonable command of English and their responsibilities.

11.3.11 Children

A child is an individual who is under 18 years old in accordance with schedule 1 of the *Acts Interpretations Act 1954*.



It would be very rare for the OFT to interview a child. However, if required to, an inspector must only interview the child if a support person is present during the interview and the child has spoken to their support person in private before the interview (if practicable).

A child who is suspected of committing an offence, cannot choose a victim of the offence as a support person.

11.3.12 Aboriginal or Torres Strait Islander

An inspector must not begin an interview with a person they believe is an indigenous person (Aborigine or Torres Strait Islander) unless:

- the interviewee's support person is present during the interview (unless the interviewee has expressly and voluntarily waived their right to have a support person present)
- the interviewee has had the opportunity to speak to their support person in private before the interview begins (if practicable)

The 'Anunga' Guidelines for indigenous people were set forth in a decision of the Supreme court of the Northern Territory in 1975. The guidelines are not legally binding, but provide direction to ensure indigenous people are treated fairly during an interview process. A brief rundown of the guidelines follows:

Interpreters	Interpreters must be present at an interview. Aboriginal English is a separate dialect of English and does not always follow the rules of meaning as Standard English. See section 11.3.13 for interpreter information.
Support person -	Allow interviewees to have access to a support person during an interview. This may be their lawyer, the interpreter, or another person altogether.
Confirm and clarify a caution	Make absolutely certain an indigenous suspect truly understands a caution. A simple 'yes' from the suspect is insufficient because they may be gratuitously concurring (saying 'yes' without necessarily meaning it). This may be because they do not comprehend the question or their culture considers this to be an act of respect.
Verbal and physical indicators	An inspectors phrasing, word choice or body language must not imply 'correct' or expected answers to questions. This decreases the chances the interviewee will merely give the answer they expect an inspector wants to hear.
Confession v guilt	Do not rely on an indigenous suspect's confession as evidence of their guilt. They may not fully understand what they are accused of, what a trial process entails or what the legal definition of the word 'guilty' actually means. They may not understand individual criminal guilt because of a cultural emphasis on collective responsibility (a cultural responsibility for the actions of others without actively engaging in those actions)
Reduce stress	Make sure interviewees are not unduly stressed during an interview. Stress can exacerbate communication difficulties between an inspector and the interviewee. Offering the interviewee the chance to have a drink or use the toilet can reduce stress and make evidence more reliable.
State of interviewee	Never interview someone who is intoxicated, ill or over-tired. These would exacerbate the person's inability to comprehend their rights or requirements and any evidence obtained will probably be ruled inadmissible.
Legal representation	Always allow interviewees access to legal representation. This is a basic right for any suspect. Representation may come from Legal Aid Queensland, the Aboriginal and Torres Strait Islander Legal Service or from a private law firm.



11.3.13 People not fluent in Australian English

A person who only has a basic level of proficiency with Australian English or has a sensory disability (such as deafness), should have access to an interpreter as they are unlikely to fully understand complex legal terminology. Inspectors should arrange an interpreter who is accredited by the [National Accreditation Authority for Translator and Interpreters](#) in these instances.

11.3.14 People traumatised by the actual case

Victims or witnesses may be unable to provide reliable evidence due to trauma relating to the matter being investigated. Inspectors must not interview people they reasonably suspect to be traumatised.

11.4 ENGAGE AND EXPLAIN

Moving on from the Planning stage, the following outlines the Engage and Explain part of the PEACE model. In this stage inspectors can begin to build a rapport with the interviewee. Engaging someone in conversation can be difficult. Suspects, victims and witnesses can come from very different backgrounds and have different personalities. For this reason, inspectors should adapt their style of engagement to suit the personality and needs of the interviewee. The aim is to make the interviewee feel comfortable and understand the purpose of the interview to encourage their engagement and conversation.

This may be an interviewee's first experience of an inquiry. Therefore, the inspector should:

- explain the interview process to them
- what will happen after the interview
- who they should contact if they recall more information at a later date
- what support or assistance may be available

11.4.1 Engaging the interviewee

When conducting an interview, inspectors must be calm, professional, understanding and approachable. An inspector's aim is to ensure an interview successfully obtains required evidence and information while **keeping in mind legislative and judicial requirements** for ensuring evidence gained from interviews is admissible in court. To establish an initial rapport with the interviewee inspectors must:

- respectfully greet the interviewee (with a hand shake if suitable) and introduce themselves
- personalise the interview (For example, establish the interviewee's preferred name for use during the interview)
- ensure they feel comfortable and ask if they have any concerns
- address these concern where possible

Inspectors must be clear and coherent when asking questions, using simple language to make sure the interviewee understands the question. OFT jargon should be avoided. Inspectors should speak more at the start of an interview and allow the interviewee ample opportunity to talk during the interview. As the interviewee becomes more comfortable, they are likely to talk longer and provide more information.

To encourage or continue a good rapport throughout an interview, inspectors should:

- maintain eye contact, sit reasonably still and not fidget
- allow sufficient time to answer questions (be patient)
- Listen actively to build a rapport which can help:
 - manage the conversation
 - identify new evidence
 - identify topics to discuss in the interview
 - process how the interviewee's account relates to other evidence
 - promote interest in the interviewee and their account



- not interrupt an interviewee unless absolutely necessary
- break the conversation into key topics and guide the interviewee through the topic, comprehensively asking questions before moving on to a new topic
- monitor and evaluate the progress of the interview and adapt their plan for a shift in focus to accommodate new evidence

If during an interview a person is accompanied by a friend, relative, support person or lawyer and asks to confer with them, the inspector should:

- provide reasonable facilities as soon as practicable to enable the person to speak to the other person (For example, a separate room where a conversation will not be readily overheard and a room without active recording equipment)

11.4.2 The role of a support person

A support person may be:

- an adult relative or another adult chosen by the interviewee
- a lawyer or representative from an advocacy organisation
- a primary caregiver or guardian who is not a parent
- another adult who can support the interviewee, provide necessary care and help look after the interviewee's interests
- somebody included in the list of Aboriginal and Torres Strait Islander support persons and interpreters
- a justice of the peace who does not work for the department

A support person is not permitted to answer questions on behalf of the interviewee. Before interviewing a person, the inspector must identify the interviewee to the support person (if not already known) and ensure the support person understands their role in that they:

- must act in the best interests of the interviewee
- can seek clarification of a question
- challenge an improper question
- challenge the manner an inspector is using to ask a question
- must not provide legal advice unless they are a lawyer
- ask the interviewee questions to ensure they understand:
 - what the inspector says during an interview
 - anything an interviewee says in the interview may be used as evidence in a court
 - where the interviewee is a suspect, they can ask for a lawyer to be present
 - where the interviewee is a suspect, they are not obliged to say anything during questioning unless they wish to do so (except for name and address or as provided under an Act being used)

11.4.3 When a person cannot perform the role of a support person

The interests of the interviewee is the primary concern when or if deciding to exclude a support person from an interview. A person may not be a support person where the inspector reasonably believes they:

- are intoxicated (drugs or alcohol)
- have impaired capacity
- cannot perform their role due to illness, injury, pain or tiredness
- have an affiliation, association or other relationship with the inspector
- have a relationship of authority (professional or otherwise) with the interviewee that may prevent them from acting in that person's best interests
- are a victim, or a friend or relative of a victim, of the alleged offence
- witnessed or was a suspected accomplice in the alleged offence
- do not comply with the requirements of a support person as indicated in this manual

The inspector must explain to the support person and the interviewee the reasons for their exclusion, and this explanation must be written or electronically recorded. The inspector must arrange for another support person to be present before continuing with an interview.

11.4.4 Unreasonable interference by a support person

A support person unreasonably interfering with the interview may be excluded for:

- preventing proper questions being put to an interviewee
- obstructing an interviewee's response to a question (other than to provide advice)
- answering questions on behalf of the interviewee
- providing written replies during the questioning for the interviewee to quote

Before excluding a support person from an interview, the inspector must:

- warn the person not to interfere with the interview and that they may be excluded if they continue to do so
- give the person a second chance to stop unreasonably interfering after the warning

A support person who is a lawyer **cannot be excluded** from an interview for advising the interviewee not to answer any questions/further questions or for giving legal advice.

11.4.5 Removal of support persons unreasonably interfering with an interview

After these steps have been exhausted, the inspector may exclude the support person from the interview and must advise the interviewee:

- the support person has been excluded and why
- the interview will be delayed or re-scheduled for a reasonable amount of time until an alternative support person can be arranged

11.4.6 Electronically recording interviews

The OFT has an interview room with recording facilities as do regional offices. If these rooms are not available, another room suitable for interviews can be used along with a hand held digital recorder. Inspectors should whenever practicable electronically record interviews. If a suspect makes a confession or admission and it is captured electronically during an interview, the information may be admissible as evidence in court.

The OFT's [Digital recording and evidence standard operating procedure](#) provides information on recording interviews.

11.4.7 Beginning the formal interview

The first step in any interview is the formal process of beginning the interview to ensure a 'record of interview' is admissible as evidence. Even if an interview is being electronically recorded, written notes must still be taken during the interview which must begin with:

- official advice the interview is being recorded and why (formal record of interview)
- the date, time and location of the interview
- who is in attendance (full names and positions/titles)
- the reason for the interview

Generally, the interviewee will know why they are being interviewed, but they may be unsure how important their contribution will be. Inspectors must explain the broad reasons for the interview in context with the entire investigation.

11.4.8 Suspect only - Rights during interview

A fundamental principle of the legal system is that a suspect is afforded basic rights of:

- the right to silence
- the presumption of innocence

This practice was formalised in 1912 in what is known as the Judges' Rules. While the presumption of innocence until proven guilty is a given, a suspect must be advised of their right to silence through a formal caution. This ensures interviews are conducted fairly.

Suspects are not obliged to incriminate themselves however, inspectors must be aware of any specific statutory provisions which require a suspect to provide information under law. For example, sections 90 (4) and (5) of the FTA explains that a person must not, without



reasonable excuse, refuse to furnish information and that it is not a reasonable excuse to refuse to provide information because the information may incriminate the person.

11.4.9 Suspect only - The formal caution

Where it is believed a person has committed an offence which may result in court action, the inspector must as early as possible formally caution them about their rights. Evidence obtained where a person is not advised of their rights, may not be admissible in court.

The following is an example of how to apply the caution:

"I must advise you I have reason to believe a contravention of the (...Act) has occurred and is being investigated. You are not obliged to say or do anything unless you wish to do so, however anything you do say or do will be recorded and may be given in evidence at a later date."

A caution must be:

- given in a language the person is reasonably fluent in
- translated into a language the person is reasonably fluent in, or
- given in writing to a person who cannot hear adequately

When a suspect clearly states they understand the formal caution, the inspector can proceed. If the suspect indicates they do not understand the caution, or if the inspector believes they have not understood the caution, the caution must be further explained or rephrased to make it clearer. Incriminating information provided by a suspect who unsure of their rights is likely to be ruled inadmissible in proceedings.

- **Suspect only – Where a formal caution may not be required**

A suspect need not be cautioned if there is insufficient evidence of an offence at the beginning of an interview. **However**, if sufficient evidence emerges during the interview, the suspect must be cautioned immediately. If a suspect says something after the inspector forms an opinion they have committed an offence, but before the inspector has had a chance to issue the caution, the statement may still be admissible as evidence but the suspect must immediately be cautioned before they say anything further.

11.4.10 Multiple suspects

In cases where there are multiple suspects to one case, it is imperative inspectors interview each suspect separately. Inspectors must discuss an interview strategy with their senior officer for matters involving multiple suspects as these cases are often complex.

11.5 ACCOUNT, CLARIFICATION AND CHALLENGE

The purpose of an interview is to obtain accurate and reliable information about a matter. Questions will be centred on specific topics to ensure the information gathered is relevant to the investigation and to increase the likelihood of obtaining the information sought. The following guidelines will help inspectors obtain a complete account from an interviewee.

11.5.1 Recalling events

Inspectors should:

- allow the interviewee to give an initial **uninterrupted full account** of everything they know about the matter
- provide interviewees with sufficient time to communicate their first account
- listen carefully, take notes and note areas where further information may be obtained
- in the case of a witness or victim interview, emphasise the importance of being able to identify a suspect or trader

Some interviewees may not provide a first account. This may be because:

- they do not understand what they are required to do, even after careful explanation



- they refuse to answer the questions

When this happens, inspectors should:

- consider the aims of the interview listed in the interview plan
- systematically cover all questions and topics identified and noted in the plan
- use open questions to encourage the interviewee to give a full response

Where interviewees are struggling to recall information, inspectors can encourage them to try and recall information from different viewpoints or with different goals in mind. This may help recall by increasing the number of ways they arrive at a given piece of information. Inspectors can help interviewees to re-establish the context of key events by:

- referring to other events that occurred either around the time of the incident, such as *‘Was this around Christmas time?’*
- asking them how they were feeling at the time of the incident
- encourage them to describe memories of all five senses (For example, hearing – *“Do you recall any specific noises at the time?”*. This can trigger a memory of events
- drawing a plan or sketch of the area where the incident took place and asking if it assists in recollection of events

Inspectors who use alternative recall strategies should also return to the interviewee’s original account (if one was provided) as a new strategy may have jogged the interviewee’s memory therefore adding to or changing information in their original account of events.

11.5.2 Breaking down and clarifying an account

An initial account given by an interviewee may be incomplete or insufficient. Breaking down the interviewee’s account into manageable episodes or topics can help clarify events. Topic breakdowns may be included in the interview plan however, inspectors should be prepared to modify these topics as the interviewee clarifies their account.

Inspectors can help interviewees expand their account by:

- systematically examining or breaking down each episode or topic
- asking for more details when necessary
- asking an open question to start examining (or probing) the identified areas

An example of breaking down an account might be:

Interviewee - “I contacted the person who was selling the car and he met me so I could look at it, then I brought it”. The breakdown of this account can be treated almost like legislation in that each element of the sentence will become a point for clarification. For example:

- **“I contacted the person”**
 - How did you contact the person?
 - Was the person male or female?
 - How did you know how to contact the person (e.g. phone number in paper etc.)?
- **“who was selling the car”**
 - How did you know the car was for sale?
 - How do you know the person you contacted was the person selling the car?
- **“and he met me”** – *where, when, etc...*
- **“So I could look at it”** – *what did you see, etc...*
- **“Then I brought it”** – *how much, any paperwork etc...*

Inspectors should keep asking questions about each topic until all the necessary information is obtained or the interviewee is unable to provide any more information.

11.5.3 Questions

- **Open and closed questions**

Open questions require detailed answers. They cannot be answered with a yes or no reply, nor do they imply an expected answer. Open questions invite the interviewee to recall details



as they remember them. The table below uses the mnemonic 'TEDS' (Tell, Explain, Describe and Show) to demonstrate some general forms of open questions.

Instruction	Explanation	Example
Tell	Gather initial evidence and develop further	'Tell me everything you remember of the event.' 'Tell me more about [topic].'
Explain	Elicit further details about specific process	'Explain how the process works.'
Describe	Elicit further information about a person or thing	'Describe the person you call big guy.'
Show	Non-verbal demonstration or explanation	'Show me what you did next.' Ensure non-verbal evidence is videotaped or described as part of the record of interview

Closed questions generally require a yes or no response. However, closed questions may mislead the interviewee and plant a false memory. The following table gives examples of closed questions that may work better if rephrased as open questions.

Closed questions	Rephrase as an open questions
Did she have joggers on?	What was she wearing?
Was it a red car?	Can you describe the car?
Was this on the 23rd of May?	What date was this?
Did [Person X] talk to you?	Did you speak with anyone?

Open questions are generally more useful than closed questions. An exception to this might be asking closed questions to force the suspect to give direct answers to questions they may have tried to evade. This should generally be done at the end of the interview.

- **Leading questions**

Leading questions are often deemed unfair and inadmissible in proceedings. Therefore, inspectors must **avoid using leading questions** which are worded to **suggest an answer**. The following is an example of a leading question:

Inspector – “You arranged for these goods to be described wrongly, didn’t you?”

If yes, does it mean “**yes it didn’t**” or “**yes I did.**” Similarly, if no, does it mean “**no I didn’t**” or “**no I did.**”

Instead inspectors can clarify a point by using closed questions such as, “**Did you arrange to have the goods described wrongly?**” or, an open question such as “**How did you arrange to have the goods described?**”

- **Direct questions**

Direct questions are closed leading questions. An example may be:

Inspector – “Is it true you paid \$10,000 for that car?”

Direct questions should be used to confront an interviewee with the truth. They may choose not to reply or to evade the question, but usually they have no alternative but to provide a direct yes or no answer.

- **Overlapping questions**

An overlapping question is an open question which is built on all or part of the previous answer. It is an easy technique to apply and can be extremely useful. An example may be:

Inspector “What was in that case?”

Interviewee “I don’t know”

Inspector “Why don’t you know?”



Interviewee *"I didn't open it. I was helping my brother".*

Inspector **"What was your brother doing?"**

Interviewee *"Opening the case" etc.*

- **Multiple question**

A multiple question is more than one closed question in one sentence and should be avoided because the answer is likely to be confusing. For example, an inspector may ask:

'Did you arrange for the goods to be undervalued or described in a misleading way?'

This example asks two questions: one about undervaluing and another about a misleading description. A single answer of 'Yes' can be applied to any part of the question. Instead each component of the question should be asked in its own right. For example:

'Did you arrange for the goods to be undervalued?' (closed question)

'Did you arrange for the goods to be described in a misleading way?' (closed question)

Even better questions may be:

'How did you arrange for the goods to be valued?' (open question)

'How did you arrange for the goods to be described?' (open question)

11.5.4 Challenging an account

Inspectors may challenge an interviewee's account if it is inconsistent with other evidence but must remain professional, confident and co-operative when challenging inconsistencies. This can be difficult if it appears a blatant lie is being told, however there is no place for confrontational, sarcastic, aggressive remarks or attitude on the part of an inspector.

Directing a challenge of the information back to the interviewee with composure is more effective in trying to gain the truth of a matter. Challenges may occur:

- if the interviewee's version of events, given before or during an interview, conflicts with other evidence or of their own previous account
- when holding back information to test what a suspect might say

The following is an example of challenging an account:

"You have told me the money you received from the customers was paid to your overseas supplier but they have not sent you the goods. I have reviewed your bank account and have not been able to identify the payment to your supplier but can see large transfers to pay off a personal credit card. Why is that?"

11.5.5 Confessions

A **suspect** may wish to offer a written or verbal confession during an interview. This is a significant piece of evidence, but it must be offered voluntarily and obtained fairly. A confession will only be admitted as evidence if the suspect chose to confess:

- while fully aware of their legal rights, particularly the right to silence
- without inspectors offering threats, promises or inducements
- having been treated fairly, especially if they are considered vulnerable

REMINDER: Inspectors must apply the caution early in an interview to avoid confessions being excluded. Courts will decide whether to admit a confession by considering:

- the Judges Rules
- the Public Service Code of Conduct

A verbal confession, if correctly recorded, carries as much weight as a written confession. Verbal confessions should be electronically recorded. A confession transcribed into a formal statement must be offered to the suspect to sign. The suspect's signature on the transcription proves the confession is their own.



11.6 CONCLUDING AN INTERVIEW (CLOSURE)

The interview is closed, according to the plan, when all topics included in the plan have been covered, inspectors conclude sufficient evidence has been obtained to finalise a matter and/no purpose will be served by continuing. Inspectors should conclude the interview in a courteous and professional manner and must verify all aspects were sufficiently covered by:

- asking the assistant inspector if there is anything they wish to ask or say
- asking the interviewee if there is anything further they wish to say about the matter

The inspector will then:

- confirm there is mutual understanding about what has taken place
- explain what will happen in the future
- ensure all parties have signed or witnessed documentation, evidence viewed or written statements as necessary



Before an interview is finished, an inspector must ensure the interviewee:

- confirms they were treated fairly and not subjected to threats, promises or inducements to participate in the interview
- is asked if they would like a copy of the interview for their records. Do not force a copy onto the interviewee as one can be provided at a later date if they wish
- is thanked for their time

Only once this has been done, the inspector can note the time the interview is concluded and **stop the recording device.**

Electronic recordings of interviews should be made available to a suspect and/or their lawyer if they request a copy by providing:

- a copy of any recorded interview (audio, video or audio-visual) immediately at the conclusion of the interview (or within 7 days)
- the opportunity to view an audio and video recording (on request)

11.7 EVALUATION (AND DETERMINATION)

The information obtained in an interview must be evaluated to see what it provides to the investigation. Inspectors must incorporate the facts into their Evidence Matrix and review the investigation to date and all available evidence to determine if the information strengthens or weakens the case, if it presents any defences to be explored or any additional lines of inquiry are necessary. Chapter 10 of this manual provides for the assessment of evidence.

Evaluation of an interview can also be in the form of a performance analysis to identify areas of learning to improve interviewing skills. It is good practice to review the interview recording and/or conduct a debrief with your assisting inspector to discuss how the interview went by assessing what went well and identifying what could be done better next time.

11.7.1 Insufficient evidence

If it is determined there is insufficient evidence for the OFT to take enforcement action, inspectors may consider the educational options provided in [Chapter 7](#) of this manual.

11.8 COMMON INTERVIEW MISTAKES

These common interview mistakes can have a major impact on an inquiry:

- Overuse of closed questions
- Using multiple questions within one question
- Speaking over the top of an interviewee making the electronic recording inaudible



- Not actively listening to answers and missing key evidence to follow up.

Inspectors can easily avoid these mistakes by:

- having a clear, detailed interview plan
- maintaining their familiarity with this manual
- being professional and composed during the interview



12 RECORDING INFORMATION

A record of information can prove the commission of an offence, identify an alleged offender and/or disprove possible defences. It is important for OFT officers to accurately record all occurrences, observations and conversations from beginning to end of a case. Along with recording information in MACS, the most common ways of recording information are:

- written records such as notes or witness statements prepared for court matters
- maps, sketches or other diagrams
- electronic records such as audio recording (interviews) and visual recording (photographs, video and satellite imagery)

12.1 WRITTEN RECORDS



Written records are the fundamental building blocks of an inquiry. An efficient OFT officer will remember that **if something is worth making a mental note about, it is worth writing down**. Accurate written records are also important to ensure all information is available for a case review officer. There are many reasons a file may need to be reviewed by another inspector or a senior officer who will need to be aware of all the information.

12.2 NOTES

All written notes must be made at the time of the event or as soon as practicable after the event. Notes should be set out clearly and concisely in an easy to understand format. The written notes may become evidence in court or requested under RTI provisions.

A court will regard the **first** written record of information as being evidence and may refuse to admit any subsequent notes about the same information. A court may even refuse to admit the first written record if it is not made concurrently.

OFT officers should always take written notes directly into **their official notebook**, which is issued for this purpose. In exceptional circumstances, OFT officers can write notes in another document noting date, time and events as they happen. A court will prefer notes made in the shortest possible time frame rather than notes made at a later date in an official notebook.

12.2.1 Managing the official inspector notebook

Every official OFT inspector notebook is a numbered, accountable document and is subject to a notebook register. The notebook is the property of OFT and remains subject to subpoena and provisions of RTI at any time. Notebooks are issued to an OFT officer upon their appointment as an inspector with replacements obtained via a senior officer.

OFT officers can only retain completed notebooks if they are currently working on matter for which the notebook contains notes or if they require the notebook for impending court action. Used notebooks along with any evidence related to a case must be kept in a secure location and stored in chronological order by date of completion.

Inspection of official notebooks should be conducted by senior officers as part of the ongoing file review process.

12.2.2 MANDATORY principles for handwriting notes

OFT officers must:

- enter notes into the numbered pages in their official notebook or, number pages in an alternative note book as they progress
- write legibly
- write in order of events and note observations factually and comprehensively
- avoid using abbreviations unless they are OFT related abbreviations



- cross out errors with a **single line** so the entry can still be recognised
- leave no gaps between lines
- use black or blue ink pen (not pencil)
- post-dated hand written notes are NOT acceptable
- NEVER remove a page from a numbered notebook for any reason

12.2.3 Required information

OFT officers must adopt the following format for recording required written information:

- Time, date and location (with every new entry)
- Case File/operation reference details
- Name and position of inspector
- Name and position of any assisting officers
- Name and position of other people present
- Name and contact details of suspect
- Name and contact details of witness
- Body of notes should include:
 - Actions and outcomes
 - Statements made by persons
 - Observations
 - Notes re photographs taken or items seized



A court may refuse permission for an OFT officer to refer to, or submit their notes if the court is not satisfied the notes were made contemporaneously or while the events were fresh in the OFT officers mind.

12.3 WITNESS STATEMENTS

A witness is a person who is able to testify regarding information relevant to an offence. Witnesses can include all sorts of people including:

- the complainant or victim
- the offender
- an observer or another person who has supplied information during the investigation
- an OFT officer

A statement is a formalised written and/or typed testimony of a person's knowledge of events about an incident and should be recorded as a narrative (first person) and in chronological order.

OFT officers must prepare and plan for a statement by considering the witness information noted in their case plan. A witness should be interviewed and a statement taken **as soon as possible after an event**. The statement will assist in guiding the inquiry and provide evidence in any subsequent court matters. OFT officers should ensure statements are:

- as comprehensive as possible
- written in the words of the person
- obtained from appropriate persons at the earliest practicable opportunity
- read and signed by the person giving the information

12.3.1 The purpose of a statement

Statements may be used to:

- gain evidence and record information while it is still fresh in a person's mind
- obtain a clear and complete picture of the events surrounding an incident



- assist as a basis for an investigation as each statement may contain information that provides further lines of inquiry or provides evidence substantiating one or more elements of alleged offences
- weigh and compare evidence and progress an investigation
- compare events between complainants, witnesses and defendants
- enable the OFT officer to get an accurate picture of the situation
- identify witnesses perspectives or events
- identify elements of a potential breach
- help OFT officers determine if there is enough evidence to launch enforcement action for a breach of legislation
- determine if a person has sufficient knowledge surrounding a matter
- record and introduce documents or other articles of evidence that will be relied upon in a testimony
- minimise the chance of new and unexpected evidence being presented in court
- refresh a person's memory before they give evidence in court

12.4 TYPES OF WITNESS STATEMENTS

12.4.1 Investigative statement

An investigative statement is an initial statement made by a witness during an inquiry and may include hearsay and other inadmissible information not able to be used in a formal statement. It can include references to notes written, documents or other relevant information. Investigative statements can prove a valuable tool during inquiries.

OFT officers should encourage a person to make notes of everything they know at the earliest opportunity. This information can then be used if preparing a formal statement.

12.4.2 Handwritten statement

An OFT officer can take a handwritten statement in their official notebook or another type of workbook in the field or on location. It is acceptable to have the person giving the statement read it and if they agree to the information noted, request them to sign it. The OFT officer must ensure the interviewee **adopts** the written record by:

- signing or initialling each page of their statement
- signing at the end of the statement immediately after it has been recorded not leaving any gaps between the statement and the signature

If there is an assisting officer, that officer should review the notes and if satisfied they are accurate and comprehensive, must also **adopt** the notes by initialling each page. This then becomes the original statement of that person and if the matter proceeds to a prosecution, a typed copy can be produced and submitted with the original for ease of reference.

12.4.3 Formal statement

A formal statement is the preferred option for gaining information of a person's version of events, observations and information. When obtaining a formal statement for proceedings, OFT officers should remind the person giving the statement they may be called to provide their evidence in person at court. Formal statements are expanded on at 12.5 of this chapter.

12.4.4 Unsigned statement

A witness might refuse to sign a statement. In this case **record the time and date the witness refused to sign**. An unsigned statement cannot generally be tendered as evidence. However, can be used to provide important information to assist in the prosecution process and determine whether to summons the person to provide evidence in court.



12.4.5 Addendum statement

Once a statement is signed, it is best practice to add an addendum statement for any changes or additions to an original statement. Occasionally a person may wish to change or add to a statement they have signed as a final account. This may occur because the person wants to add information, remembers further details or realises they have made a mistake. The addendum statement:

- provides clarification and or additional information to the original statement
- contains an introductory paragraph linking it to the original statement
- must be clearly noted at the start with “**ADDENDUM Statement of <NAME of person>...**”

Do not redo or amend the original statement to incorporate the changes. As with any written statement, the person must sign the addendum statement and be provided with a copy should they be required to attend a hearing.

12.5 FORMAL STATEMENT

Formal witness statements are usually a transcript of a statement given during an interview and provide a written substitute for oral testimony. Formal statements are used in both criminal and civil proceedings and certain rules apply to the completion of these accounts.

Based on information noted in the case plan, the OFT officer will be aware if a formal statement from specific persons are necessary. OFT officers can use a record or interview or their notes to assist in drafting the statement, however, formal statements **must be written in the person's own words** with clarification obtained if required. Generally, the ability to recall names and event specifics varies greatly between individual witnesses. Accordingly, the interviewee criteria noted at section 11.3.6 of this manual, must also be considered when communicating with and obtaining any type of statement from a witness.

Discrepancies may appear in accounts given by different witnesses about the same event. This does not mean some people are necessarily being untruthful but merely illustrates there are sometimes differences between what witnesses actually see how they interpret what they see. Evaluation of each account given must be considered carefully. For example, a witness may be more sympathetic in the case of offences against themselves or those close to them.

A formal statement:

- sets out all of the admissible information of an incident to the person's knowledge
- includes references to documents and other relevant items of evidence
- must be signed by the person:
 - on the bottom of every page of the statement, and
 - at the declaration under the Justices Act (or in some cases, the *Oaths Act 1867*)
- provides evidence for prosecutors, lawyers and the courts

12.6 TAKING A FORMAL STATEMENT

The [OFT Formal Statement template](#) provides the requirements for a formal statement which must contain:

- a heading
- an opening
- body content
- conclusion

Before beginning a formal statement, the witness should be encouraged to review their notes and recount the events to ensure nothing has been missed.

12.6.1 Statement heading

The statement must contain the following:



- Statement number (more than one statement may be provided by a person) and date of the statement
- The name, date of birth and occupation of the person giving the statement – **DO NOT** include their address or contact details unless this information is important as evidence. In most cases this information can be noted as 'known to OFT' which must be valid
- For an expert witness – the name, occupation and qualification which allows them to provide expert witness
- The name and position of the OFT officer taking the statement and OFT office location

12.6.2 Statement opening

A heading noting who is providing the statement begins the opening. For example, **Statement of <Full name>**. In the case of an addendum statement, the wording would be **Addendum Statement of <Full name>**.

The **first** paragraph of the opening statement should introduce the person giving the statement and briefly explain their relevance to the matter being investigated. It should:

- identify who is making the statement. As the statement must be written in the first person, use the format – *"My full name is..."*
- state a person's occupation if it is important to their evidence. State their role, employer and length of time in the position
- state if a witness knows an offender and explain their relationship. For example, Witness - *"I know 'person X' as they have been my employer for the past seven years"*
- state if the witness is speaking on behalf of an organisation and include the authority on which they speak

If a person is unknown to another party, a physical description including height, build, colouring, accent, distinctive markings and idiosyncrasies must be noted.

12.6.3 Statement body content

The body of the statement explains events and must be written in the witness's words as the first person. For example, *'I walked down the road....'* *'He approached me and said.....'*

OFT officers must not put words in a witness's mouth but can discuss comments made by the witness to clarify matters to obtain the fullest account possible.

The content should allow the reader to clearly understand the circumstance and events.

The body of the statement should:

- record events in chronological order as they happened
- based on the person's own sense of sight, sound, smell, touch and taste
- be a truthful, accurate and comprehensive personal account and not simply second-hand evidence (hearsay). Hearsay or other inadmissible evidence must only be used if it **links or explains** other factual actions. If used it must be enclosed in brackets
- record peoples' names as said with their full name and description noted in brackets in the first instance. For example, *"that was Timmy (Timothy Bradstreet....)"*
- Record conversations as a dialogue wherever, possible. For example, I said: *"What kind of warranty do I get with the vehicle I am buying here today?"* She said: *"because it's under \$5,000 I can only give you a 500km warranty"*.

12.6.4 Outlining physical evidence/exhibits

The statement must outline any physical evidence including notes or photographs that will be relied on as evidence. Physical evidence mentioned in statements is referred to as an 'exhibit'. Exhibits include documents and other items which should be referenced in the statement by providing a description of the item and/or any exhibit receipt number.



For ease of identification, labelling and referencing of exhibits in a statement should remain consistent. Reference to exhibits should be in the form of a notation placed on a separate line which is **not** numbered and directly under the paragraph in the statement which refers to the exhibit. The reference should be in **bold** font to draw attention to the fact an exhibit is available. The following are examples of suitable methods of referencing exhibits:

I am able to produce a copy of an email and attachments including.....

or

Exhibit Email thread dated 23 March 2018 (reference number if applicable)

Attachment to email – Invoice 1 (reference number if applicable)

Attachment to email – Application form (reference number if applicable)

Inspectors/the OFT prosecutor should be mindful to be ready to produce exhibits in court.

If a copy of original evidence is attached to the statement, an entry within the statement should link the attachment. For example, *“I took a photograph of the damage and a copy of this photograph is at attachment X”*. Any attachments are to be numbered starting at 1.

12.6.5 Substantiating observations

A person's observations may be critical in describing an offence or proving a particular element of an offence. The ADVOKATE acronym is a valuable prompt and was developed from a judge's comments in a 1977 case in the English court of appeal. Considering each of the points in the acronym provides a basis to fully explore the person's observations and assess if any errors or discrepancies are evident or possible.

Instruction	Explanation
Amount	Amount of time the person observed the incident or other person
Distance	Distance from the person to the other person / incident
Visibility	Visibility including atmospheric conditions, lighting, time of day etc
Obstructions	Obstructions to the person's line of sight
Knowledge	Did the person know, or know of, the suspect prior to the incident
Any reasons	Any specific reason to remember a particular person or incident
Time lapse	Time lapse between the incident and when a person made a statement
Errors	Errors or material discrepancies

12.6.6 Concluding/endorsing a statement

When the statement is finalised, the person making the statement must:

- read the statement, word for word, start to finish and make notes of anything which may not be correct or where further information can be provided
- make any substantive or grammatical changes they require
- Once any changes or additions have been made, the person who gave the statement must adopt it as their formal statement by signing each page of the statement.

Final endorsement – The person making the statement must also officially acknowledge the statement is accurate and complete by signing under the provisions of either the Justices Act, the *Oaths Act 1867* or in accordance with legislation administered by the OFT. **Inspectors must change the Statement template accordingly to reflect the correct Act.**

• ***Endorsement under the Justices Act***

In most OFT cases, a statement under the Justices Act is used when prosecuting in a Magistrates court or QCAT. The statement only requires endorsement by the person giving the statement.

• ***Endorsement under the Oaths Act 1867***

Consideration of using a statement under the Oaths Act must be discussed with a senior officer in the first instance. If the declaration is provided under the provisions of the *Oaths Act*



1867 (Oaths Act), must be signed **in the presence of** and witnessed by a Justice of the Peace (JP) or the Commissioner for Declarations must witness the endorsement.

The JP or the Commissioner for Declarations must include the indent of a seal of office and their registered office number. They must also provide the prescribed mark of office alongside their signature. See table below:

Office	Prescribed Mark
The office of Justice of the Peace	'Justice of the Peace' or 'JP'
Justice of the Peace (Magistrates Court)	'Justice of the Peace (Magistrates Court)' 'JP (Magistrates Court)' or 'JP (Mag Ct)'
Justice of the Peace (Qualified)	'Justice of the Peace (Qualified)' 'JP (Qualified)' or 'JP (Qual)'
Justice of the Peace (Commissioner for Declarations)	'Justice of the Peace (Commissioner for Declarations)' 'JP (C.dec)'
Commissioner for Declarations	'Commissioner for Declarations' or 'C.dec'

Statements obtained interstate must be declared by a JP of that State or Territory.

12.6.7 Swearing/affirmation of oaths

As well as preparing a statement under oath, OFT officers may need to swear an oath in the course of their duties such as for service of a summons or to support grounds for a warrant.

Some OFT officers may be unable to swear an oath for religious or cultural reasons. Section 5 of the Oaths Act allows that such officers may make an affirmation rather than swear an oath. An Oath may be sworn or affirmed in any court or in the presence of a JP.

12.7 AFFIDAVITS

An affidavit is similar to a statement in that it is written evidence sworn to be true. An affidavit can be read in court or a tribunal without the witness needing to attend as they have already testified to its truthfulness. In contrast, a statement can be accepted as evidence if the witness attends court and attests to the truth of the statement.

An affidavit can be used for criminal and regulatory offences and **is only generally prepared on the instruction of OFT's legal advisor**. Affidavits are not often used within OFT however, where OFT officers are unsure if a statement or an affidavit is appropriate to their case, they are encouraged to seek advice from their senior officer in the first instance.

12.8 ELECTRONIC RECORDS

Audio and visual information are considered electronic records captured via electronic devices such as:

- voice recording equipment
- camera and video equipment
- interactive personal application device's (ipad's), and
- telephone equipment

Inspectors using electronic equipment must:

- familiarise themselves with the equipment before using it
- ensure batteries are fresh with spare batteries available if needed
- the device is fully charged
- ensure the date and time settings on recording equipment are set accurately

The OFT's [Digital recording and evidence standard operating procedure](#) provides information on capturing electronic records.



12.9 AUDIO RECORDS

Recording conversations during an inquiry ensures an impartial, accurate and contemporaneous record of a conversation is captured and protects both the inspector and the interviewee from vexatious and false allegations of misconduct. The recording may be undertaken as an interview out in the field, in OFT offices or over the telephone.

Recorded conversations are preferred by the judicial system as it eliminates the risk of discrepancies between an inspector's records and the actual events. Audio recording devices commonly used by inspectors are:

- hand held recorders (usually to record conversations or to conduct interviews out in the field)
- mobile telephone or ipad recorders
- an in-house recording system within OFT offices

12.9.1 Recording telephone calls

When recording a telephone conversation, the recording device must **not** be fixed or attached to the telephone. Answering machines, phone taps or 'bug devices' are prohibited and **cannot** be used as they may intercept the electronic telecommunications signal.

Telephone conversations can be recorded via a portable recorder held near the telephone ear piece or preferably make the call using speaker phone and record the conversation with a hand held or portable device or in-house recording system.

12.9.2 Covert and pretext recording

Covert recording – Queensland's [Invasion of Privacy Act 1971](#) allows an inspector to electronically record a private conversation with a person(s) without informing that person the conversation is being recorded. It also allows for communicating the conversation to another party under certain circumstances. However, the OFT encourages staff to be open, transparent and respectful of persons, therefore, recordings are to be undertaken **overtly** whenever possible.



Should an inspector issue a caution to the interviewee while **covertly** recording a conversation, the inspector must immediately after issuing the caution, **inform the interviewee the conversation is being recorded**. Failure to do so may jeopardise the admissibility of their evidence, including any admissions made by the interviewee.



Under the *Invasion of Privacy Act 1971* a suspect or their lawyer can also record conversations covertly. Therefore, inspectors must always keep in mind they may be the one being recorded covertly

Pretext recording – Pretext recording involves the OFT using an independent third party to obtain an admission or other evidence from a suspect via a telephone or other recording device. Pretext recording is also acceptable in Queensland.

12.10 ELECTRONIC VISUAL RECORDS

Electronic visual records describe a scene and allow a third party such as the courts, to understand what has occurred. Visual evidence includes electronic data and documents, still photography and video footage which can all be integrated to form one case.

12.10.1 Electronic data or documents

Proof of business transactions or correspondence may be required as part of the inquiry process or as evidence in a case. Inspectors may capture electronic data or documents via removable recording devices such as USB sticks. Alternatively, they may wish to photograph available hard copies of the data or documents.



12.10.2 Photographs

Photographs usually support other evidence. However, photographs can become actual evidence and must represent the scene fairly and accurately. It is always better to take too many photographs than too few as it may not be possible to return to a scene afterward.

A scene should be photographed extensively, using different angles and zooms, remembering to **zoom in** for details such as serial numbers. Additionally, to orientate a viewer photographs may be taken from one specific point but in different directions. For example, a series of photographs facing north, northeast, east, southeast, south, southwest, west and northwest.

If wishing to capture a specific item, that item should be photographed alongside a ruler or other suitable scale object to indicate its dimensions.

12.10.3 Videos

Video recordings can be used in evidence and may show a useful dimension of a scene and how an incident or offence occurred or was committed. When taking a video, a fair and accurate picture of the land form or environment must be taken not just a select part which may not accurately reflect the whole picture.

An **objective commentary** on what is being recorded should also be provided. Video recordings can also be used as an additional and more detailed formal record of interview and can provide a valuable opportunity for the person to explain in their own words what is being recorded. This can then form part of that person's formal statement.

Video evidence on-site can be used in conjunction with still photography.

12.10.4 What visual information should be recorded?

Everything that will assist with an investigation should be visually recorded and may include:

- Electronic financial records, business related documents or correspondence
- Details of places or items susceptible to being changed or disturbed
- An overall view of the incident scene
- The scene as it would have been viewed by persons involved in an incident
- Any equipment or items relevant to or involved in an event
- Relevant signs or markers such as company or property names, signs or vehicles

12.11 SAFEGUARDING ELECTRONIC RECORDS

In the field – Inspectors must immediately detail in their notebook or other notepad the audio or visual recordings. Details should include:

- Case file number and the name and address of the entity subject to the inquiry
- Name of inspector or OFT officer recording the conversation, picture or video
- Date and time of record (**do not** rely on the digital date display of a visual device)
- The geographical location and/or direction of record (description or GPS points)
- What the record depicts (verbal conversation, item photographed, video taken)
- Record sequence (as each record occurs)

Upon return to OFT offices – inspectors must as soon as practical transfer original recorded audio and/or visual records, without alteration, to the electronic investigation file created **within** the investigations business drive. Standard naming conventions to clearly index, name and identify the records must be used in anticipation of court proceedings. For example:

1. Audio recording – *Date* – Conversation – *Case file Name and No.*
2. Audio recording – *Date* – Interview – *Case file Name and No.*
1. Photo – *Date* – Item – *Case file Name and No.*
2. Photo – *Date* – Item – *Case file name and No.*



1. Video – *Date – Scene – Case file Name and No.*

The audio and visual records saved in the electronic case file are now considered the original record of evidence and **must not** be used for any other purpose. Inspectors wishing to review and use electronic records during the course of an inquiry and in order to progress the investigation may **create a 'copy'** for their own use.

Alternatively, the information must be transferred to a portable device such as a USB and secured in an evidence facility as noted in the [Evidence \(exhibit\) and property handling procedure](#).

All recorded actions undertaken in the field must be noted in MACS.



13 ENFORCEMENT OPTIONS

Where an investigation determines an entity has failed to meet its obligations under legislation, the most appropriate enforcement action for the circumstances must be determined. There must be enough evidence to support **every** element of an offence before implementing enforcement action. **Court or tribunal enforcement action should not be launched without the EC's agreement.**

13.1 GENERAL RULE OF ENFORCEMENT

To assist in maintaining consistency, relevance and accountability when applying enforcement action, the following general rule of enforcement has been developed.

Where there is substantial, reliable and credible evidence to support enforcement action, and there are no other factors directly affecting the inquiry, the enforcement option taken should be that which is linked to the OFT's compliance model as noted in [Annexure B](#).

The model is to be used as the principle guide for enforcement options based on the case's breach category. Where there is uncertainty about enforcement and based on the type of enforcement being considered, consultation must be undertaken with a senior officer.

13.2 EXCEPTIONS TO THE GENERAL RULE OF ENFORCEMENT

There will be circumstances and issues that may support an exception to the general rule of enforcement. If it is believed to be in the public interest to take alternative enforcement action outside the model, approval to do so must be obtained from band level authority 1 - 3. In determining enforcement action, consideration must be given to:

- the seriousness of the offence
- whether non-compliance is wilful, repetitive or prolonged
- whether the business has an enforcement history
- what scale of consumer detriment is posed
- whether disadvantaged groups are put at risk
- whether the type of non-compliance is part of an emerging trend
- whether there are public interest and community expectations
- exceptional circumstances such as natural disasters or emergency situations (see [section 3.10](#))

13.3 COMPLIANCE ENFORCEMENT OPTIONS

The links below provide advice on enforcement options:

- [Formal written warning](#)
- [Infringement notice](#)
- [Civil penalty notice](#)
- [Enforceable undertaking](#)
- [Public naming/public warning](#)
- [Disciplinary action](#)
- [Prosecution action](#)
- [Civil proceedings](#)
- [Criminal proceedings](#)

13.4 ENFORCEMENT DIRECTIVE – TRUST ACCOUNTS

Inspectors are to initiate enforcement action appropriate to an offence in keeping with the CEP and the principle of the more serious the breach, the stronger the enforcement action. In



the case of trust account breaches, the OFT's [Trust account enforcement - Directive](#) provides a guide to what action should be taken.

Agents and auditors found to be non-compliant should be contacted prior to making any enforcement decisions. This contact should be made in person or by phone directly with the agent or auditor and not through their staff, family or third parties. The purpose of direct contact is to provide them with natural justice and to ensure they understand what is required to achieve compliance and that further non-compliance may result in escalated enforcement action.

Auditors perform a key role in protecting trust money and consumers as the legislation positions them to be the first and most regular examiners of trust accounts. Where they fail to perform their functions to the required standard, this can place all the trust money handled by the agents they work for at risk.

Auditors who fail in their functions should be contacted to explain requirements and to acknowledge how many agents are affected by the auditor's non-compliance. This approach can use the relationship auditors have with agents to help minimise future compliance risk by both the auditor and the agents they work for.

13.5 FORMAL WRITTEN WARNING (OFFICIAL WARNING)

An official warning, is used where a minor breach of legislation has been committed and the elements of the breach can be proven. An official warning is a document advising an entity that a breach of OFT legislation has occurred, the details of the breach and provides the corrective action required to rectify the matter. An official warning also advises that the OFT will monitor the situation and if evidence of a similar breach occurs, the OFT has the right to take higher enforcement action. An official warning can be issued under band level authority 1 to 5 for any of the actions noted below:

- Education has previously been undertaken for an unproven allegation of the same offence; **or**
- the matter is **not** a category 0, 1 or 2; **or**
- the trader has not had enforcement action taken against them within the previous 2 years; **or**
- the contravention is minor in nature and inadvertently caused by the trader; **or**
- there are no more than 2 specific breaches identified for which it is appropriate to issue a warning; **or**
- the trader has shown a willingness to comply with legislation and rapidly apply corrective action to prevent the breach recurring

An official warning **must**:

- include a date of issue
- the location of the alleged offence
- identify the trader and any relevant business entity principals
- indicate the behaviour that is in breach
- note the offence section of the legislation breached and its penalty provision
- state the corrective action required to prevent further breaches
- advise the OFT may institute enforcement action without further warning should evidence be found of additional breaches of the same provisions

Warnings are exclusively generated in MACS. The [MACS compliance manual](#) provides instructions on how to issue a warning in MACS. If a warning is issued in error or needs to be withdrawn, OFT officers must complete an [OFT application request form](#) and submit a data fix request to the OFT's BAU unit for actioning.



13.6 INFRINGEMENT NOTICE

The [State Penalties Enforcement Act 1999](#) (SPE Act) provides for infringement notices to be issued under OFT legislation listed at schedule 1 of the [State Penalties Enforcement Regulation 2014](#) (SPE Regs).

Before issuing an infringement notice, OFT officers should be confident that:

- the matter is not a category 0 or 1
- the offence, in isolation, is relatively minor
- any defences available to the defendant are limited by statute
- the offence is listed in Schedule 1 of the SPE Regs

An infringement notice is designed to:

- improve compliance levels in a cost-effective manner
- improve compliance levels without congesting the courts or tribunals
- develop consumer and trader confidence in the compliance process
- encourage traders to compete equitably and follow fair trading principles
- promote timely remedial action

13.6.1 Issue limit for Infringements

During an investigation, **up to but not exceeding** 5 infringement notices can be issued under the authority of band levels 1 – 4. Warning notices can be issued for any further minor breaches. Depending on the offence/s, court or tribunal action may also be considered for offences not exceeding these limits.

Infringement notices are exclusively generated through MACS. The OFT's [Fines Manual](#) provides information about infringement notices and related legislative provisions. The [MACS compliance manual](#) provides instructions on creating and issuing infringement notices through the MACS database.

OFT officers should also make themselves familiar with Part 3, Division 3 and 4 of the SPE Act which notes offenders have **time limitations** for the default, appeal or request for cancellation of an infringement notice.

13.7 CIVIL PENALTY NOTICE (ACL)

Civil penalty notices (CPNs) supplement criminal sanctions that may be applied for certain offences against the ACL. CPNs allow the OFT to take efficient and effective action for breaches of the ACL instead of taking court or other action. CPNs are issued under the authority of the FTA and are issued to:

- improve compliance in an economical manner for government, the public and traders
- improve compliance levels without proceeding through a court or tribunal
- develop consumer and trader confidence in the compliance process
- encourage traders to compete in an equitable and fair manner
- promote timely remedial action

CPNs are exclusively generated through the MACS system. OFT officers must be familiar with protocols for generating a CPN prior to generating the notice. The OFT's [Fines Manual](#) provides comprehensive information about CPNs and relating legislative provisions as well as instructions on creating, issuing and maintaining CPNs through the MACS database.

A civil penalty notice may be withdrawn in lieu of other enforcement action in cases where a band level authority 1 - 3 considers the issue of a CPN is not in the public interest and the commencement of alternate enforcement action will deliver a greater compliance benefit.



13.7.1 Issue limit for CPNs

If during the course of an investigation multiple offences are detected for which CPNs may be issued, the inspector is permitted to issue up to 3 CPNs to an entity following the approval of appropriate band level authority (see [Annexure D](#)). The issue of more than 3 CPNs must be approved by band level authorities 1 – 2.

Court or tribunal action may also be considered for multiple offences. If proceedings are applicable, legal advice and assistance from the EC is to be obtained.

13.8 ENFORCEABLE UNDERTAKINGS (LIMITED TO PARTICULAR LEGISLATION)

An Enforceable undertaking is a signed agreement (or deed) between the Commissioner of Fair Trading and a person or organisation that agrees to do or not do particular things.

Enforceable undertakings can only be administered under particular OFT legislation and the ACL. Therefore, **inspectors must ensure the legislation relevant to an offence allows for an enforceable undertaking as an enforcement action.**

An undertaking usually arises from a serious breach of legislation and may be a suitable alternative to civil, administrative or prosecution action. Enforceable undertakings may include an agreement to:

- compensate consumers
- run corrective advertisements
- introduce Fair Trading compliance programs
- act in a certain manner
- do, or not do specified things

An enforceable undertaking should only be considered if:

- inspectors have considered other enforcement options
- the undertaking is commensurate to the matter's significance for consumers, the marketplace and the community
- the matter is not serious enough to warrant recording a conviction
- no previous enforcement action has been taken against the trader for similar conduct
- the trader is likely to comply with the terms of the undertaking

In all cases the EC must be consulted in respect of actioning this option.

The Commissioner may choose not to accept an offer of undertaking where:

- civil, administrative or prosecution proceedings would secure a complete settlement not available through an undertaking
- Prosecution action would be more appropriate for determining a financial penalty

An enforceable undertaking is different from a court undertaking. The main differences are:

- the commissioner does not have to commence court action before accepting an enforceable undertaking
- a party that breaches an enforceable undertaking does not face contempt of court charges, but may be subject to an application to the court for an order to comply with the undertaking

If the party breaches their undertaking, inspectors should apply to a court for an order requiring they comply with the undertaking. Parties that do not comply with a court order are liable to face further court-imposed sanctions. **The EC must be consulted about any application to the court where a party has breached an agreed undertaking.**

OFT officers must read the OFT's [Enforceable undertaking policy](#) and use the [Enforceable undertaking procedural guidelines](#) which provides comprehensive information and instruction for deciding on, actioning and managing an enforceable undertaking. The [MACS compliance manual](#) provides instruction on recording an enforceable undertaking in MACS.



13.9 PUBLIC NAMING / PUBLIC WARNING

Public naming – A public naming identifies information about a trader whose activities are of concern to the OFT. It does not include information already in public circulation, such as the outcome of court proceedings. A public naming may be instigated by OFT, or as a response to an information request by the media.

Public warning ([ACL](#) only) – A public warning notice which includes **product safety warning** notices, can be issued where it is determined a person or organisation has breached the general protections (chapter 2), or the specific protections (chapter 3) or the offence provisions (chapter 4) of the ACL. Consideration will also be given to whether:

- one or more persons has, or is likely to, suffer detriment as a result of the misconduct
- there is a high level of public interest

Public naming or a public warning **should only be used** when the community's right to know about a trader's practices outweighs the trader's right not to have their reputation adversely impacted. When considering either warning, **OFT officers must discuss the matter with the EC in the first instance.**

The OFT's [Disclosure of trader related information policy](#) outlines the circumstances where a public naming or public warning is appropriate and should be consulted before implementing any action. The OFT's [Disclosure of trader related information procedure](#) and associated templates must be used when initiating a public naming or public warning.

13.10 DISCIPLINARY ACTION

The OFT is able to take internal administrative disciplinary action or commence civil or administrative disciplinary action through QCAT for breaches of specific legislation administered by the OFT. All proposed disciplinary action through QCAT **must be** considered by the OFT's EC before any action is taken.

13.10.1 Internal administrative disciplinary action (Licence decisions)

Along with enforcement actions noted above, the OFT has delegated authority to make administrative decisions regarding the licence status of traders and salespersons licensed under specific legislation administered by the OFT. This authority includes the power to suspend, cancel, refuse to renew or restore, or imposing conditions on a licence.

If the licence of a particular person or trader is considered for administrative disciplinary action, the OFT officer must detail the case in an [internal memorandum](#) to the OFT's Licensing Probity team with the following information:

- Background information on breaches and how the matter came to OFT's attention
- The legislation subject to the matter
- The licence holder
- The type of licence
- Details of any investigation conducted and evidence gathered
- A recommendation on disciplinary action

The memo must be submitted to management for approval in the first instance. If approved, the manager will forward the report to the OFT's Licensing Probity team for consideration and direct administrative disciplinary action if required.



Legislation relevant to the matter and the **delegation authority** for that legislation must be considered when preparing the memorandum. If OFT does not have delegated authority under legislation to decide on a licence, it can make an application to QCAT.



13.10.2 QCAT disciplinary action

Before considering QCAT action, inspectors must ensure the legislation under which the breach was determined has provisions for QCAT to hear and decide disciplinary matters and that the **EC is consulted** where disciplinary action is being considered. QCAT disciplinary action can be considered where:

- a serious breach of legislation has occurred (category 0, 1 or 2)
- a person continually fails to comply with legislation
- a specific need for disciplinary action exists due to other legislative contraventions (For example, cancellation of a license following police notification of criminal or unfavourable behaviour)
- the person has ignored lower level enforcement action

Inspectors must make themselves familiar with the application processes of [Queensland Civil and Administrative Tribunal Act 2009](#) and the **time limitations** for commencing action with QCAT as noted in the relevant OFT legislation. Actioning a matter through QCAT is expanded on in [Chapter 18](#) the QCAT process.

13.11 PROSECUTION ACTION

Prosecution is often the most appropriate response to serious breaches and systemic non-compliance. Prosecution (with subsequent media attention) sends a clear message to other traders and may bring other victims to light. Prosecution action will only be taken if:

- a serious breach of legislation has occurred (category 0, 1 or 2)
- the EC confirms the information and evidence obtained during the inquiry is sufficient (admissible, substantial and reliable) to obtain a successful outcome
- it is in the public interest to do so. Public interest factors include:
 - mitigating or aggravating circumstances
 - age, physical and/or mental health or special infirmity of the trader, witness or victim
 - timeliness of action for the alleged offence
 - a lack of alternative suitable enforcement action
 - other forms of enforcement action have not been effective

The OFT may also initiate legal proceedings where a trader has contravened an enforceable undertaking or elected to have a matter heard in court rather than paying a penalty.

See [Chapter 16](#) for the initial prosecution process.

13.12 CIVIL PROCEEDINGS

The OFT as a regulator can apply to a court to carry out a specific **enforcement orders** as noted in the sections below. In some instances, the application of specific enforcement orders such as injunctions are available to the OFT under several pieces of OFT legislation. Inspectors must consider the legislation under which a contravention has occurred to see if specific orders are available under that legislation. The **EC must be consulted** in these cases.

The court will decide whether to issue an order based on the strength of the OFT's application. Court imposed enforcement orders include:

13.12.1 Orders to compensate or provide redress

The court may make any order it considers appropriate to compensate the person or reduce their loss or damage. Orders can include:

- voiding a contract – immediate and/or at all times on or after a specified order date
- varying a contract – immediate and/or at all times on or after a specified order date
- refusing to enforce any or all contract provisions
- a direction for the respondent to refund money or return property



- the payment of money to the injured person by the respondent
- directing the respondent to repair or provide parts to repair goods or to supply specific services at no cost to the affected person

13.12.2 Non-Punitive (non-punishable) Order

A court may make the following non-punitive orders:

- Direct the person to perform a service as specified in the order and relates to the conduct, for the benefit of the community or a section of the community
- An order ensuring the person does not engage in the conduct, similar conduct, or related conduct, during the period of the order (which must not be longer than 3 years) including:
 - Direct the person to establish a compliance program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations concerning such conduct
 - Direct the person to establish an education and training program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations concerning such conduct
 - Direct the person to revise the internal operations of the person's business which led to the person engaging in such conduct.
- The person must publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with the order.

13.12.3 Injunction

If the court issues an injunction against an activity, the business must not continue to carry it out. The OFT will apply for an injunction if the alleged conduct is:

- serious and ongoing or has the potential to recommence
- likely to cause wide spread or significant detriment
- still ongoing despite any previous enforcement action from OFT

Once a matter becomes the subject of an injunction, the investigation is handled and finalised by the Major Investigations unit which ensures MACS notes are updated with relevant details.

13.12.4 Adverse publicity order

The OFT may make application to the court for an adverse publicity order which is an order requiring a person to:

- disclose to specific people (such as customers) about the nature of their breaches
- publish an advertisement (at their own expense) to warn the general public

The court will set out the content and audience of the disclosure.

13.12.5 Pecuniary penalty order

The application of a pecuniary penalty is a court based civil proceeding initiated by the OFT for the purpose of punishing or deterring a party from engaging in a serious breach of the law.

Pecuniary penalties are monetary debts and, if unpaid, are collected through the civil process, such as seizure and sale actions and bankruptcy proceedings. This is unlike a criminal fine which may lead to imprisonment if unpaid.

An advantage of a pecuniary penalty in the context of consumer protection is that an enforcement agency can seek a civil penalty which has a deterrent effect and, in the same proceedings, seek consumer redress (where possible) and stop the contravening conduct.



13.12.6 Disqualification order

Upon application made by the OFT a court may, if satisfied a person has contravened, has attempted to contravene or has been involved in the contravention of legislation administered by the OFT, make an order disqualifying the person from managing a corporation for a period the court considers appropriate.

The OFT will pass on all disqualification orders to [ASIC](#) which keeps a register of disqualified people.

13.13 CRIMINAL PROCEEDINGS

There will be occasions where it is appropriate for the OFT to commence proceedings pursuant to provisions of the Code. Where such action is considered appropriate, the inspector is to consult with the EC. The decision to initiate proceedings for alleged offences under the Code will rest with Band 1 authorities only.



14 THE INVESTIGATION SUMMARY

The [investigation summary](#) is an important document and forms the basis for gaining approval to undertake specific enforcement action or to close a file. It should be completed as soon as practical after all investigative processes (including interviews, examination and securing of evidence and all reviews) have been undertaken.



A well-kept and constantly reviewed case plan will make for an accurate and informative investigation summary

14.1 CONSIDERATION OF CASE INFORMATION

Inspectors completing any case (including non-enforcement matters) should consider:

- if the evidence is substantial, reliable and admissible
- if the corroborative information is independent and credible
- what avenues of inquiry were undertaken
- how the trader responded
- how serious the breach is
- if the trader is likely to continue with the activity
- what inquiries were undertaken if a trader under investigation could not be found
- what enforcement action is appropriate
- why a particular enforcement option was selected?

14.2 WRITING AN INVESTIGATION SUMMARY

The investigation summary must detail:

- the initial issue or allegation
- note the substantive breach identified
- identify other breaches or issues
- the trader response
- avenues of inquiry undertaken
- findings, including all supporting reasons
- recommended action
- any loopholes or inadequate legislation
- any likely prosecution or infringement issues may have media value for OFT
- referenced evidence
- details of any trader reparation (redress, rectification etc)



It is essential to document input from relevant parties. For example, a management direction to take a particular course of action regarding decisions to commence or not commence prosecution proceedings, the reasons why and the circumstances surrounding a particular decision

14.3 CONFIRMING A DETERMINATION

Following the completion of inquiries and any consultation, the investigation summary, the investigation file and any related documents and evidence must be provided to the senior officer for consideration and approval of proposed enforcement action.





Do not prepare high level enforcement documents such as a court briefs, court orders or undertakings before discussing a case with a senior officer who may suggest an alternative type of enforcement action is more appropriate. It takes significant time and resources to prepare this type of documentation therefore prior discussion with a senior officer is a must. These officers are experienced decision makers and can assist inspectors to make informed choices during and upon completion of, an enquiry.

If the senior officer is the appropriate band level authority to approve the proposed enforcement action, and the enforcement action is not one to be considered by the EC prior to actioning, the inspector can initiate that enforcement action.

If proposed enforcement action must be approved by a band level authority 1 or 2, an internal memorandum including any documentation supporting the proposed enforcement action must be provided to that band level authority (through a manager) for approval.

[Annexure D](#) provides for band level authorisation of specific enforcement action. For example, Band levels 1 – 5 (Commissioner for Fair Trading/Executive Director OFT to AO5 Senior Investigations Officers) can authorise the issue of a warning notice. Band levels 1 – 4 (Commissioner for Fair Trading/Executive Director OFT to AO6 Principal Investigations Officers) can authorise the issue infringement notices. Authorisation of civil penalty notices varies depending on the entity. However, only a band level 1 (Commissioner for Fair Trading/Executive Director OFT) can authorise a public warning, safety warning notice, injunctive action or Category 0 and 1 court based action.

14.4 CONSULTATION ON A DETERMINATION

Where sufficient evidence exists to prove a contravention but the type of enforcement action cannot be decided, guidance from an immediate senior officer must be sought. This may occur when inspectors:

- cannot easily determine the most appropriate enforcement option, such as in a case with multiple breaches
- require advice and assistance about legal enforcement
- is unsure if they have enough evidence to launch court or tribunal action
- believe the trader is likely to contest the enforcement action
- is considering seeking external legal advice such as from the Crown Law Office

Consultation in determining if court based enforcement action is appropriate, must be instigated **as early as possible** to reduce the risk of delays in preparing any court documents.

If after discussion, a determination on appropriate enforcement action still cannot not be reached, inspectors must **email** the EC (through their manager) and arrange a meeting with the EC to discuss the case and consider the most appropriate enforcement action.

14.5 THE OFT'S ENFORCEMENT COORDINATOR

The EC can provide advice throughout an investigation particularly where a senior officer is unsure on more complex or high priority matters. The EC can assist where there is uncertainty about:

- admissible evidence
- witnesses
- enforcement action
- legal options – The OFT's Legal Services Unit (LSU) can provide specialist legal advice. However, all consultation with LSU must be in writing (email) and directed through, or in conjunction with the EC



14.5.1 EC consideration of high-level enforcement

Where band level authority 1 – 3 has approved high level enforcement action such as an injunction, court or tribunal action, enforceable undertakings and public naming or public warnings, the EC's role is to review material provided to the EC and liaise with the Director, Investigations and Enforcement (IE).

The EC will then provide advice, in conjunction with the Director, on whether the proposed enforcement action is validated by the case documents, if further information is required or if other enforcement action is more suitable.

It should be noted that while the EC does provide advice, the EC position as a band level 4 authority does not overrule an approval made by a band level authority 1 – 3.



15 INITIATING ENFORCEMENT ACTION

Upon approval by an appropriate band level authority, enforcement action can be initiated.

15.1 NON-COURT OR TRIBUNAL BASED ENFORCEMENT

The following provides for actioning non-court or tribunal based enforcement:

Enforcement action	Processing resources
Warning notice	Created in MACS – MACS compliance manual
Infringement notice	Created in MACS – MACS compliance manual
Civil penalty notice	Created in MACS - Fines Manual
Enforceable undertaking	Enforceable undertaking policy and guidelines
Public Naming / Public warning	Public information disclosure procedure
Internal disciplinary action (Licensing)	Licensing Probity Team will finalise the enforcement

15.2 COURT AND TRIBUNAL MATTERS

This section has **general** application to prosecuting offences under OFT legislation. As noted at 2.6.2 Classification of offences, section 3 of the Code outlines criminal and regulatory offences for in Queensland legislation.

Criminal offences contained within legislation administered by OFT are either:

- Indictable, meaning the offenders cannot, unless otherwise expressly stated, be prosecuted or convicted except upon indictment (before a judge and jury in a District or Supreme court)
- Summary, meaning a person guilty of a regulatory offence may be summarily convicted by a Magistrate court

Most offences prosecuted by the OFT will be brought on complaint (in a summary way) in a Magistrate court. Where the same criminal act could be charged as either a summary or an indictment offence, the summary offence is preferred. Therefore, the process outlined in this manual involves the prosecution of summary offences brought before a Magistrate court.

Prosecution on indictment - It is important to remember some offences may be prosecuted on indictment in the Magistrate court with the prosecution progressing to the higher courts (District or Supreme Court) where the offences may be determined.

If consideration is being given to bringing a charge on indictment then advice via the EC (through the Director, IE) should be obtained prior to commencing those proceedings.

There is a minimum level of legal education required to prosecute matters in the District or Supreme courts and these needs must be met by the OFT's Legal Services Unit in consultation with the EC. An investigator cannot present a matter in these higher courts.

15.2.1 Overview for prosecution on indictment

The following offences may be prosecuted summarily or upon indictment.

Act	Section	Offence
<i>Property Occupations Act 2014</i>	206(2)	Wrongful conversion and false accounts



<i>Motor Dealers and Chattel Auctioneers Act 2014</i>	215(2)	Wrongful conversion and false accounts
<i>Criminal Code</i>	408C	Fraud (upon pre approval from OFT ED)
<i>Fair Trading Act 1989 incorporating the Australian Consumer Law (Qld)</i> NB - Indictable offences are within the ACL(Q).	151(1)	False or misleading representations about goods or services
	152(1)	False or misleading representations about sale etc. of land
	153(1)	Misleading conduct relating to employment
	154(1) & (2)	Offering rebates, gifts, prizes etc.
	155(1)	Misleading conduct as to the nature etc. of goods
	156(1)	Misleading conduct as to the nature etc. of services
	157(1) & (2)	Bait advertising
	158(1) & (3) & (5) & (7)	Wrongly accepting payment
	159(1) & (2)	Misleading representations about certain business activities
	161(1) & (3) & (4)	Unsolicited cards etc.
	162(1) to (3)	Assertion of right to payment for unsolicited goods or services
	163(1) & (2)	Assertion of right to payment for unauthorised entries or advertisements
	164(1) & (2)	Participation in pyramid schemes
	166(1)	Single price to be specified in certain circumstances
	167(1)	Referral selling
	168(1)	Harassment and coercion
	194(1) & (2)	Supplying etc. consumer goods that do not comply with safety standards
	195(1) & (2)	Supplying etc. product related services that do not comply with safety standards
	197(1) to (3)	Supplying etc. consumer goods covered by a ban
	198(1) & (2)	Supplying etc. product related services covered by a ban
	199(1) & (2)	Compliance with recall orders
	203(1) to (3)	Supplying etc. goods that do not comply with information standards
	204(1) & (2)	Supplying etc. services that do not comply with information standards

15.2.1.1 Jurisdiction – Prosecution Election

The prosecution's authority to elect jurisdiction for OFT offences is contained in the following legislation:

Act	Section
<i>Property Occupations Act 2014</i>	225(2)
<i>Motor Dealers and Chattel Auctioneers Act 2014</i>	227(2)
<i>Criminal Code</i>	552BB
<i>Fair Trading Act 1989 incorporating the Australian Consumer Law (Qld)</i>	94(2)

15.2.1.2 Jurisdiction – Accused Election / Magistrate Determination:

Even if the prosecution elects summary jurisdiction, the magistrate must not determine the matter if the accused requests that the charge/s be indicted, or if the magistrate believes the



charge/s should be indicted. The statutory basis for this accused election or magistrate determination is contained in the following legislation:

Act	Section
<i>Property Occupations Act 2014</i>	225(5)
<i>Motor Dealers and Chattel Auctioneers Act 2014</i>	227(5)
<i>Criminal Code</i>	652(2)
<i>Fair Trading Act 1989</i> incorporating the <i>Australian Consumer Law (Qld)</i>	94(4)(b) [652(2) CC]

15.2.1.3 The Test - Prosecution Election

Summary jurisdiction will be preferred unless the conduct could not be adequately punished other than on indictment having regard to:

- the likely sentence in the event of a conviction on indictment
- the maximum penalty a magistrate may impose if the offence is dealt with summarily
- the antecedents of the alleged offender; and
- the circumstances of the alleged offence, including:
 - the harm or risk of harm to the environment caused by the offence
 - the culpability of the offender
 - whether a comparable offender has been dealt with for a similar offence on indictment, and
 - any other mitigating or aggravating circumstance

15.2.1.4 Procedure – Prosecution Election

If the OFT considers a charge should be indicted, they must seek advice from the Director of Public Prosecutions (DPP). The request for advice *must* be made before the election of jurisdiction and *should* be made before charges are laid if possible. The OFT's request for advice from the DPP should include:

1. the brief of evidence
2. the OFT's legal advice on the evidence, prospects of conviction and likely sentence
3. any time limit within which summary charges must be charged, and
4. any other relevant material

The DPP must respond to a request for advice from the OFT within one month of receipt of this material.

If the DPP disagrees with the OFT's preference for prosecution on indictment, the DPP will explain their reasons in writing. Upon receipt of these written reasons the OFT must elect summary jurisdiction.

If the DPP advice is to proceed on indictment the OFT will prosecute.

15.2.1.5 Accused Election / Magistrate Determination

Where the accused elects to be prosecuted upon an indictment or a magistrate considers the charge should be indicted, the OFT will conduct the committal hearing.

Within one month of the committal hearing, the brief of evidence, depositions from the committal, along with any other material the OFT considers relevant should be provided to the DPP.

- The DPP will decide, after consulting with the nominee of the OFT, whether an indictment should be presented
- If an indictment is to be presented, it will be presented by the Office of the DPP
- The DPP, in consultation with the OFT, will brief counsel to appear for the prosecution
- The OFT will be responsible for all costs of the prosecution
- The prosecution cannot be discontinued without the approval of the DPP



15.3 DUTY OF FAIRNESS, EXPEDITION AND IMPARTIALITY

All regulatory authorities must act in a timely, fair, impartial and efficient manner. This duty includes the way the OFT conducts prosecutions. These basic principles can be achieved by:

- ensuring the prosecution case is presented accurately and fairly
- ensuring any investigation and resulting prosecution is completed in the shortest reasonable timeframe
- offering all relevant evidence to the court during the presentation of the case
- making balanced submissions ensuring each point made is substantiated by evidence
- responding to submissions made by the defendant if factually incorrect or misleading
- being fully prepared to present a case avoiding the need for adjournment
- being aware of your skill and knowledge level and seeking advice, guidance and training as required
- ensuring the decision to prosecute (or not) is based on evidence and the law
- eliminating personal or professional bias

15.4 QCAT AND THE MAGISTRATE COURT

Serious crimes and offences are generally prosecuted on indictment and must be heard and determined in the higher District or Supreme courts. As noted previously, this manual focuses on prosecutions in a summary way where inspectors will represent the OFT in a Magistrate court. The OFT may also bring matters before QCAT through an Application process where preparation for a hearing is similar to that of preparing for a Magistrate court.

The level of proof determines **where** a matter is to be prosecuted.

Court/Tribunal	Level of proof required
Magistrates court or higher (criminal)	Beyond reasonable doubt
Magistrates court or higher (civil)	On balance of probabilities
QCAT	On balance of probabilities

While the above notes a balance of probabilities for civil and QCAT matters, inspectors must still make every effort to prove all matters beyond a reasonable doubt.

15.5 QCAT

QCAT is an independent, statutory body that hears applications for disciplinary action like those made by the OFT about someone's licence. It also adjudicates civil law disputes and reviews administrative matters and decisions made by Queensland Government agencies.

As noted at section 13.10.2 inspectors must ensure the legislation under which a breach is determined has provisions for QCAT to hear and decide on the matter and note any time limitations for commencing action.

15.6 THE MAGISTRATE COURT

The Magistrates court has jurisdiction to deal with less serious criminal offences including many offences noted under legislation administered by public service departments. All OFT summary prosecutions commence before the Magistrate court which comprises of a single Magistrate who decides both questions of law and fact. The person named on the complaint is the person who is alleged to have committed the offence and will be referred to as the defendant. The OFT is the 'complainant and prosecutor' in these matters.

15.6.1 Which Magistrate court?

Section 139 of the [Justices Act](#) provides that a prosecution shall be heard and determined in the Magistrates court within the district where the offence was committed.



Although section 23C of the Justices Act allows for the complaint to be heard in alternate locations, matters should always go before the Magistrates court in the same district and division as the offence occurred, where possible. Therefore, if a variation of district is being considered, specific advice from EC should be sought prior to commencing the prosecution.

The district and divisions of the Magistrates court are provided for in Section 22B of the Justices Act with the boundaries set out in Schedule 1 of the [Justices Regulation 2014](#). Queensland Magistrate courts are listed on the [Queensland courts registry](#).

15.7 WHO CAN COMMENCE A PROSECUTION?

This manual generally observes a complainant is someone who has lodged a complaint against a person or organisation. However, where legislation provides for it, the OFT's CE or OFT officers can become 'the complainant' in matters that progress to higher enforcement action such as prosecution.

Breach concerns arising from OFT compliance operations or intelligence received are also assessed and categorised with the CE or an OFT officer becoming the complainant.

Legislation can provide for who can commence prosecution action in a court or tribunal. For example, as noted at [section 6.8.1](#) of this manual the FTA does provide for an appointed inspector to commence proceedings under that Act. This allows an appointed inspector to 'make' the complaint. The inspector attends court as the complainant and as a representative of the State.

A 'public officer' is defined in section 4 of the Justices Act which includes an officer or employee of the public service of the State. The advantage of a public officer making the complaint is most notably that it allows for matters to proceed under section 142A of the Justices Act (ex parte) if the defendant does not appear in the court as required.

When commencing a proceeding for a simple offence or a breach of duty (section 19 of the Justice Act), a Magistrates court has jurisdiction to deal with a complaint in writing by any person, except where expressly provided otherwise under this Act. (Section 42(1) of the Justices Act).

15.8 TIME LIMIT FOR COMMENCING PROCEEDINGS

The limits for commencing a proceeding for an offence are generally noted in the relevant legislation. See examples at [section 6.8.1](#) of this manual. If the particular legislation does not contain a section pertaining to commencement of a prosecution, section 52 of the Justices Act applies allowing one year from when the offence was committed.

The CPRM tool provides for calculating statute barred dates during initial assessment of a matter. This initial assessment as well as ongoing reviews conducted throughout an inquiry, should ensure inspectors are fully aware of time limitations for commencing a proceeding.

Commencing proceedings out of time is an abuse of process which can result in the OFT paying costs.

15.9 PREPARATION OF DOCUMENTS

Preparing a solid case is essential for a successful outcome. Once band level approval of court or tribunal based enforcement action is obtained, documents and evidence must be prepared by the inspector for manager approval prior to consideration by the EC.

The inspector is to commence communication via email (to the senior officer and the EC) for a new case.

The following sections outline the documents required to progress a matter.



15.10 BRIEFS OF EVIDENCE

A court brief is prepared by the inspector who handled the investigation to commence prosecutions in a timely manner. It consists of a completed court brief document and a complaint and summons and will be used in court if the defendant:

- offers a plea of guilty, or
- if the defendant is not present at the hearing and the matter is to be heard *ex parte*

A court brief is to accurately identify the legislation breached and contain information to show enough evidence has been gathered to prove each element of an offence. The court brief and complaint and summons must be checked by the inspector's senior officer for sufficiency of evidence prior to being submitted to the EC who is given **no less than four weeks** to review and understand the case.

A full court brief of evidence which will incorporate a court brief, is sometimes preferred for more serious breaches and will be prepared when a defendant has elected to defend the charges before a court or tribunal. [Chapter 17](#) provides for preparing a full court brief.

15.11 THE COURT BRIEF

The [court brief template](#) provides for:

- all charges to be listed
- details of all relevant parties (defendants and witnesses)
- documentation of information gathered to show offences are substantiated
- a submission to seek a satisfactory penalty outcome

The template is self-explanatory and all sections should be completed. Information is mainly contained in the free text sections of the **Facts in Brief** and **Penalty Submission**.

15.11.1 Facts in brief

Facts in Brief should:

- outline all accurate material facts to support all elements of the charges in a logical order
- evidence and support the lawful application of powers by the inspector
- substantiate all elements of the offences (in their honest and reasonable belief) by:
 - witness or inspector admissible testimony (including admissible hearsay evidence)
 - physical or digital exhibits such as photographs, videos or documents
- show natural justice has been provided to the defendant and any relevant responses
- include at the **facts** section:
 - any defence raised by the defendant or known to the inspector
 - evidence to negate such defences
- include evidence to support the range of database searches (e.g. licence searches etc.) conducted by the inspector throughout the inquiry

15.11.2 Penalty submission

The **penalty submission** should take into account sentencing guidelines for judicial officers as set out in *section 9 [Penalties and Sentences Act 1992](#)*. This Act provides for general powers of the court to sentence offenders with appropriate and consistent punishment with consideration to rehabilitation of offenders and protecting the Queensland community.

The penalty submission should reflect these principles and include:

- the nature of the offence, how serious it is and if any aggravating or mitigating factors are known to the OFT (see section 15.11.7)
- details of how the conduct has affected any complainant/victim and the potential detriment to consumers in general if the conduct is not deterred



- clearly highlight whether or not a defendant has previous relevant OFT, QPS, or other history and attach supporting evidence in this regard
- the maximum penalty applicable to each offence
- any orders which are being sought such as compensation and disqualification etc. including if a prevalence exists to obtaining compensation over payment of financial penalty
- any other factors which exist in OFT legislation the court may need to consider, for example
 - Section 94(3) [FTA](#) provides a limitation on the penalty amount imposed for summary prosecutions. For example, half the maximum penalty
 - Certain ACL offences are offences of strict liability. (The OFT does not have to prove fault but there is a defence of reasonable mistake available)
- if the OFT seeks a recorded conviction
- the financial penalty range sought based on comparative penalties
- a request to seek applicable court costs to be ordered against the defendant

15.11.3 Comparative penalties

To assist, where required by a Magistrate, in determining an appropriate penalty, the OFT may provide the Magistrate with comparative sentences from similar cases. This assists the Magistrate to compare the facts and determine the appropriate penalty.

The EC holds **Enforcement Outcome Reports** (EORs) for previous OFT court matters which are available for use as comparatives. Inspectors must email the EC outlining details of the defendant, the type and number of offences and brief circumstances of the matter to assist the EC in identifying appropriate comparatives which will then be provided to inspectors.

It is important the inspector review the EORs to ensure they are sufficiently similar to their case. If multiple EORs are to be relied on, a comparative table to summarise the facts, similarities and differences, may be provided to the Magistrate. However, the EORs may still need to be presented.

There may not be any comparative cases available for less common offences therefore, while comparatives are helpful and should be used if available, they are not essential.

15.11.4 Compensation and other orders

OFT legislation contain provisions to make applications for compensation and other court orders. Section 35(1) of the *Penalties and Sentences Act 1992* also gives the court power to order a defendant make restitution to a person for any loss of property related to the commission of an offence, or in connection with the commission of offences.

Inspectors need to be familiar with these provisions, consider the circumstances of each case and if seeking orders is deemed appropriate, make an appropriate application to the court. The [Criminal Practice Rules 1999](#) and the [Uniform Civil Procedure Rules 1999](#) set out the format for making applications to the court. Applications can be made verbally or in writing.

To comply with the rules, an [Application for compensation](#) template is used when applying for compensation through the ACL. Alternatively, the *Form 1 General form of application to a court document* (rule 16) available on the courts' website, is used for other matters.

Details of the application should appear in the penalty submission making reference to the relevant Act and sections under which the application is being made. Application forms, schedules prepared or supporting documents providing evidence of losses sustained, should be attached to the court brief for EC approval.

It is important to note when making an application for compensation under section 237 of the ACL, the affected consumer must consent in writing (section 242). Inspectors must have the consumer sign the application for compensation documentation.



Further information about seeking compensation and other orders can be sought from a senior officer or the EC.

15.11.5 Costs

A reference to costs being sought should also appear in the penalty submission. A Magistrate has discretion to award a successful party costs incurred (as seems just and reasonable) to prosecute or defend a matter.

When the matter is finalised without the need for a defended hearing, the prosecutor will apply for costs equivalent to the filing fee. These costs are detailed on the top right hand corner of the complaint and summons. Inspectors should ensure they have the most up to date form as the fees are subject to regular variation.

In some product safety matters, costs may be awarded for the testing of faulty or dangerous products or items.

Other costs may be applicable to matters that proceed to a full hearing, these costs will be calculated and applied for at that time depending on the circumstances of the case. Costs will include any witness expenses and Legal Services costs.

Where a complaint is dismissed, a Magistrate may award costs **against** the complainant (OFT). Therefore, the OFT must ensure inquiries are conducted:

- ethically
- thoroughly
- legislatively
- with natural justice

15.11.6 Multiple charges or defendants

Inspectors must ensure separate court briefs are prepared when the following are applicable:

- There is more than one defendant
- Multiple charges cannot be joined on one complaint through statutory provisions or common law principle (see section 15.12.2 Joinder of charges)
- The location of multiple offences is across more than one court jurisdiction

When multiple charges are laid against an offender, there must be only one complainant (inspector) for all charges unless compelling reasons exist for using multiple complainants.

15.11.7 Consider mitigating circumstances

In some instances, circumstances beyond their control may contribute to a person breaching the legislation. These circumstances are called mitigations. Just as an inspector should address possible defences, they should also address any mitigations. If something is 'mitigated' it still means there was a crime, and the defendant is guilty of it but because of the special circumstances, there is justification for punishment to be reduced. For example, an agent was unable to distribute trust money in time to comply with legislation because of a virus corrupting their accounting software. There is no defence available to them under the legislation for this breach but there are mitigating circumstances. If the OFT has evidence to prove mitigating circumstances are **not** valid, that evidence must be presented.

A court or tribunal will take mitigating circumstances into account when determining a penalty. If a trader offers to resolve a matter through a form of compensation, the inspector is to alert their senior officer and consider suitable enforcement action. For example, an enforceable undertaking which includes an assurance the trader will compensate effected persons.

Very serious matters (category 0 and 1) should still proceed to court or tribunal action.



At no time should an inspector offer, indicate, infer or otherwise suggest to a trader that paying redress or any other compensation action will resolve the matter where clear evidence of a breach exists.



15.12 COMPLAINT AND SUMMONS

Prosecutions are commenced in a Magistrate court by filing a complaint and summons in the Magistrate court where the offence occurred. The 'complaint' and the 'summons', although separate legal instruments are on one form. The end result of issuing this document as one is to put forward alleged offences (complaint) against a person and bring that person before the court (summons) to answer those alleged offences.

The date nominated for the defendant to appear in the Magistrates court is referred to as the **mention or return date** of the complaint and summons. The inspector who proposes to institute proceedings should include all known charges against a defendant at or about the same time where possible. Instructions and templates (**which must not be altered in any way**) for completing a [complaint and summons](#) are located on the intranet.

15.12.1 Drafting a complaint

The complaint is an allegation which when made or sworn before a Magistrate or JP is the basis for the summons. In drafting the complaint an individual charge for each offence will be listed. The **exact words** from the Act relating to the offence are to be adopted when describing the charge.

For most charges by the OFT draft [charge wording](#) is available on the OFT intranet. For any offence charges not noted on the intranet, the EC should be consulted to ensure proposed wording is appropriate.

If the offender is a company, the complaint should name the company as the defendant and the summons should be addressed to the company's registered office as recorded with [ASIC](#) which will also have the correct ABN or ACN recorded for use on the complaint.

Each charge is supported by 'particulars' which are summary details of the facts relied upon to prove the elements of the offence. There should be a set of particulars directly below each charge.

15.12.2 Joinder of charges

A general rule of making a complaint is only one charge should appear on a complaint thus requiring separate complaints to be made for each charge. However, there are exceptions to this which the OFT will apply as appropriate, as detailed in section 43(1)(b) of the Justices Act. This covers instances where the matters of the complaint are alleged to be constituted by the same act or omission, a series of acts done or omitted in the prosecution of a single purpose, are founded on substantially the same facts or form part of a series of offences or matters of the same or similar character.

Statutory provisions also allow for simple offences to be joined to other simple offences or breaches of duty (regulatory offences) and vice versa. However simple offences or breaches of duty should not be joined to indictable offences.

If charges are to be joined, they should appear as separate individually numbered charges on the same complaint in chronological order, with the words "and further" immediately below the charge before the particulars and above the joined charge. This should be placed on a separate line, on the right-hand side of the page and in bold font.

15.12.3 Preparing the summons

A summons is an order directing the defendant to attend a nominated court on a specified date to answer a charge. It is part of the complaint and summons template. Particular attention should be given to the accurate insertion of the defendant's details as well as ensuring the date and place of attendance. Any defect may mean the matter may be adjourned or in an extreme case, dismissed.

In determining a mention or return date, it may be appropriate to wait until after the court brief and complaint and summons are approved by the EC and the complaint is ready to be lodged.



15.13 ANCILLARY DOCUMENTS

Considerations should be given to any other ancillary documents that need to be served or included with court documents.

15.13.1 Notice to allege previous convictions

Section 47 of the Justices Act allows for a previous conviction for an offence by the defendant, to be brought to the attention of the Magistrate whether or not the defendant appears in court. **This is particularly important for ex parte matters.**

If previous convictions are to be included in the proceedings, a [Notice to allege previous history](#) is to be served upon the defendant. The notice can be served at the commencement of a prosecution, or a reasonable time before defendant's first court appearance. Such notice is to be served in the same manner as is provided for the service of a summons and should be deposed on oath and in writing.

The endorsed copy of the notice is to be attached to the court brief. The prosecutor is to tender the notice and any attachments to the court upon **sentencing** of the defendant.

15.14 CHECKING COURT BRIEFS

It is important both the inspector and their senior officer check the court brief before submission to the EC to ensure all documents are completed correctly, to the required standard and clearly shows evidence to fully substantiate all the elements of listed charges. The [court brief checklist](#) must be completed and signed by both the inspector and the senior officer to show the EC all factors were considered and sufficient evidence exists for the matter to proceed. **The checklist must then be attached to the court brief.**

Audio or visual recordings to be tendered for evidence must be checked to ensure they are in working order. If the quality of the evidence is substandard, action is to be taken to ensure any recording equipment faults are rectified immediately.

15.15 ENFORCEMENT COORDINATOR APPROVAL OF COURT BRIEFS

Once the senior officer is satisfied the court brief, the complaint and summons and associated documents and evidence meet the required standard and the court brief checklist has been completed, all documents must be provided to the EC for consideration and approval by the Director IE or other Director as required prior to commencing prosecution action. The EC will provide feedback advising:

- if further information or evidence is required to ensure a positive outcome – *The inspector must provide the information/evidence or reconsider the enforcement action*
- alternative enforcement action is more appropriate – *the inspector will need to follow process for that alternate enforcement action*
- the matter can continue to prosecution – *The EC will provide relevant advice once approval is granted.*



At any stage during the checking process, the matter may be discontinued if a view is held that insufficient evidence exists or further information is required to ensure a positive outcome. Remember all actions must be noted in MACS.

15.16 MAKING THE COMPLAINT AND ISSUING THE SUMMONS

After the court brief and complaint and summons, the inspector can finalise or “make” the complaint and have the summons issued in preparation of serving the defendant to commence the proceedings.

A complaint is made when the complainant declares the contents of the complaint are true in the presence of a JP.



15.16.1 First mention date

Prior to having the summons issued and signed by the JP, the inspector should confirm and insert the appearance date on the summons. This is often referred to as the **first mention date** and will be on a specific day the Magistrate court has set to hear government prosecutions. The Queensland courts website provides a [yearly calendar](#) in this regard.



The inspector should always telephone the Clerk of Court where the matter is to be heard to confirm the date.

The first mention date must take into account section 142A of the Justices Act which prescribes notice periods allowed to a defendant to prepare and/or seek legal advice. In this regard, the defendant is to be given at least 21 calendar days' notice prior to the first mention date if service is to be effected by post and at least 14 calendar days' notice prior to the first mention date if service is to be effected in person.

Be mindful that, if the defendant does not attend court on the first mention date, there may be a possibility to make application to the Magistrate for the matter to proceed ex parte. However, this is unlikely to occur if the Magistrate is not satisfied the defendant was given appropriate notice.

15.16.2 Complaint and summons authorisation

The complainant and JP sign the complaint and the JP will also sign and issue the summons (section 53 of the Justices Act). This is generally how the OFT commence proceedings.

There are several JP's employed within the OFT who can as a public servant, under the Justices Act, witness the complaint and issue a summons. Best practice is to use a JP who does not have any direct knowledge of the investigation.

It is good practice to have at least 3 **original** copies of the complaint and summons signed. One **copy** will be served on the defendant, one **copy** will be lodged at court and the inspector should retain a **copy** on the investigation file.

A scanned copy of the complaint and summons is to be forwarded to the EC to allow a legal action to be recorded on MACS. After this point the EC should be updated with any developments such as lodging the complaint and summons at court, serving the defendant and lodging the Oath of Service.

15.17 FILING A COMPLAINT AND SUMMONS

The complaint and summons **MUST** be filed with the Magistrates court nominated on the summons within 3 calendar days of the complaint being made (section 54 of the Justices Act).



It is important to note this is **NOT** 3 business days. Therefore, if a complaint is made on a Friday, it is to be filed with the court on the following Monday. A complaint made on a Wednesday must be filed by the Friday of that week. It is also important to note the 3 days period is calculated from the date the complaint and the summons is issued by the JP. It is not 3 days from the date the defendant is served.

Ordinarily, filing with the Magistrates court occurs by physically delivering, or mailing by registered post, a full copy of the complaint and summons to the court's registry. If attending the court, have the clerk of the court sign the file copy of the complaint and summons as well as the courts copy. If lodging by registered post, retain all receipts and proof of delivery and confirm receipt of complaint and summons with the court before the first mention date.

Filing fees – Filing fee costs for the Magistrates court are found under section 19 and schedule 3 of the Justices Regulation 2004. Section 21 allows for fee exemption for State-related complainants. A State related complaint means:



- (a) the Sovereign; or
- (b) the State or a person acting for the State; or
- (c) an entity, or a person acting for an entity, whose expenditure is entirely payable out of the consolidated fund

Accordingly, no filing fee is payable by the OFT as a State related complainant.

After filing the complaint and summons with the Magistrate court, the complaint and summons is served and an oath of service completed by the 'server'.

15.18 SERVING A COMPLAINT AND SUMMONS

The service requirements for a complaint and summons are found in section 56 of the Justices Act. There are three methods of serving a summons on a defendant. These are:

1. postal service
2. personal service, served personally on the defendant
3. substituted service, served on another person who will give the summons to the defendant

Sections 39 and 39A of the [Acts Interpretation Act 1954](#) should be considered when calculating the service period by post. Section 39A (1)(b), the 'service' is taken to be effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

Consider any ancillary documents to be included with the complaint and summons when it is served. A copy of the facts in brief section of the court brief will provide sufficient disclosure of the OFT case at this stage. However, penalty submission should NOT be included.

15.18.1 Postal service

Postal service is often the most convenient means of securing the service of a complaint and summons. This method should always be considered and used where appropriate. The postal responsibility rests with the inspector who made the complaint and summons. Inspectors' are to ensure that:

- any complaint and summons served by post is sent by 'Registered Post' no later than 21 days before the return date of the summons
- a complaint and summons is addressed to the defendant at the place of business or place of residence last known to the inspector

Inspectors should consult Australia Post's [delivery guidelines](#) if serving via post.

15.18.2 Personal service

An officer who serves a complaint and summons personally must:

- hand a copy of the summons to the defendant
- explain the offence for which the summons is issued
- advise the time, date and court at which the defendant must appear

Pursuant to Section 56A of the Justices Act, a 'public officer' has the right of entry to serve summons.

- 1) Subject to subsection (3), a public officer, and a person acting in aid of the public officer, may enter and stay for a reasonable time in or on a place for the purpose of serving a summons.
- 2) The officer must produce the officer's identification to any person requesting proof of the officer's authority to be in or on the place.
- 3) If the place is premises or the part of premises used exclusively for residential purposes, a public officer, and a person acting in aid of the public officer, may enter the place only with the consent of the occupier.



Where the defendant refuses to accept a copy of the summons, inspectors are to ensure the time, date and court at which the defendant must appear are given to the defendant where possible and the copy left in a conspicuous place where the person is likely to see it.

15.18.3 Substitute service

Substituted service is a means of servicing a defendant when they cannot reasonably be located at the time of service. This method simply involves leaving the complaint and summons with another person who is in a position to later give it to the defendant. Substitute service usually occurs when someone is at the last known place of business or residence and can confirm the address is still current but the defendant is not currently present.

An inspector should only serve by substituted service, where they have made reasonable enquiries to locate the defendant in an attempt to serve them personally.

A substituted service is not to be served on another person unless that other person is:

- sixteen years of age or over
- at the last known place of residence or business of the defendant
- willing to accept the summons
- in a position and willing to give the summons to the defendant in reasonable time before the return date

When these conditions are met, the inspector is to ensure the person is served in the same manner as indicated for personal service.

15.18.4 Service to a company

Service to a company is effected in the same way as for an individual. The registered office of the company as noted on ASIC records, as at the date of service, is the appropriate service address. Section 109X of the *Corporations Act 2001* (Cth) provides other ways service can be effected on a company, for example, personally serving a director.

15.18.5 Interstate service

Section 24 of the *Service and Execution of Process Act 1992* (Cth) allows for interstate defendants to be served in the same way as in Queensland.

15.19 SERVICE NOT EFFECTED BEFORE RETURN DATE

Where a summons cannot be served in sufficient time prior to the return date and it is believed the defendant's whereabouts can be determined, the inspector must contact the clerk immediately. Sections 54(3) and (4) of the *Justices Act* allows the clerk to endorse the summons with a new return date. The inspector will make verbal contact with the court as each district may have a different process for re-dating a summons. The complainant may be requested by the clerk to attend court on the mention date to have the matter adjourned to another mention date to allow the summons to be served.

15.20 UNSERVED COMPLAINT AND SUMMONS

Where all avenues of enquiry have been exhausted and the service of the complaint and summons cannot otherwise be effected a report outlining the enquiries made and the results of those enquiries should be submitted to the EC who may direct the complaint be withdrawn at the first mention. Once approval has been received for the withdrawal of the charge, due to an unserved summons, the inspector can contact the EC to advise how to withdraw the complaint. The court brief is to be kept by the inspector with the summons.



15.21 RETURNED COMPLAINT AND SUMMONS

If Australia Post advises the complaint and summons has not been collected, this is still considered valid service. Section 56 (1) (a) Justices Act states a summons is properly served if it is posted by registered post to the defendant's business or residential address last known to the complainant. The use of the words 'by posting' in section 56 does not require proof of receipt by the defendant.

15.22 OATHS OF SERVICE

Section 56 of the Justices Act states that once the summons is served, the server should appear before a JP and swear/affirm the service of the summons by a written oath.

In any prosecution it is necessary to prove the defendant was served with the complaint and summons (especially if they do not appear). The Oath of Service attached to the complaint and summons, is that proof of service.

The oath of service template attached to the [complaint and summons template](#) sets out suggested options for different types of service as prescribed by the Justices Act. For postal service complete parts 1 and 2 in order to confirm where it was posted to and why that address was used. Part 3 should be completed when personal service is affected. In the event of substituted service the officer is to ensure the full name and date of birth of the person accepting the summons is included, as well as any comments the person makes in reference to the acceptance of the complaint and summons.

Once completed and signed, no further evidence of service would ordinarily be required. The Oath of Service should be filed with the court ASAP before the return date.

15.23 COMPLAINT AND SUMMONS SERVICE NOT EFFECTIVE

Where a suspect's whereabouts is unknown, or if the whereabouts is known but service cannot reasonably be executed, an application for a warrant to apprehend the suspect will be prepared in place of the complaint and summons. In these cases, the **EC will assist in preparing** a *complaint* under oath and apply for a *warrant in the first instance* for a defendant's arrest (sections 51 and 59 of the Justices Act).

Following director approval, the EC will action the warrant delivery to the Queensland Police Service (QPS), Warrant Bureau for execution. The EC is responsible for arranging legal representations at the defendant's court appearance date. Where OFT's legal advisor cannot attend (such as in regional areas), the QPS will act as OFT's legal representative.

The EC will liaise with the inspector throughout this process to enable the inspector to update MACS as the matter progresses.

15.24 WITHDRAWAL OF CHARGES

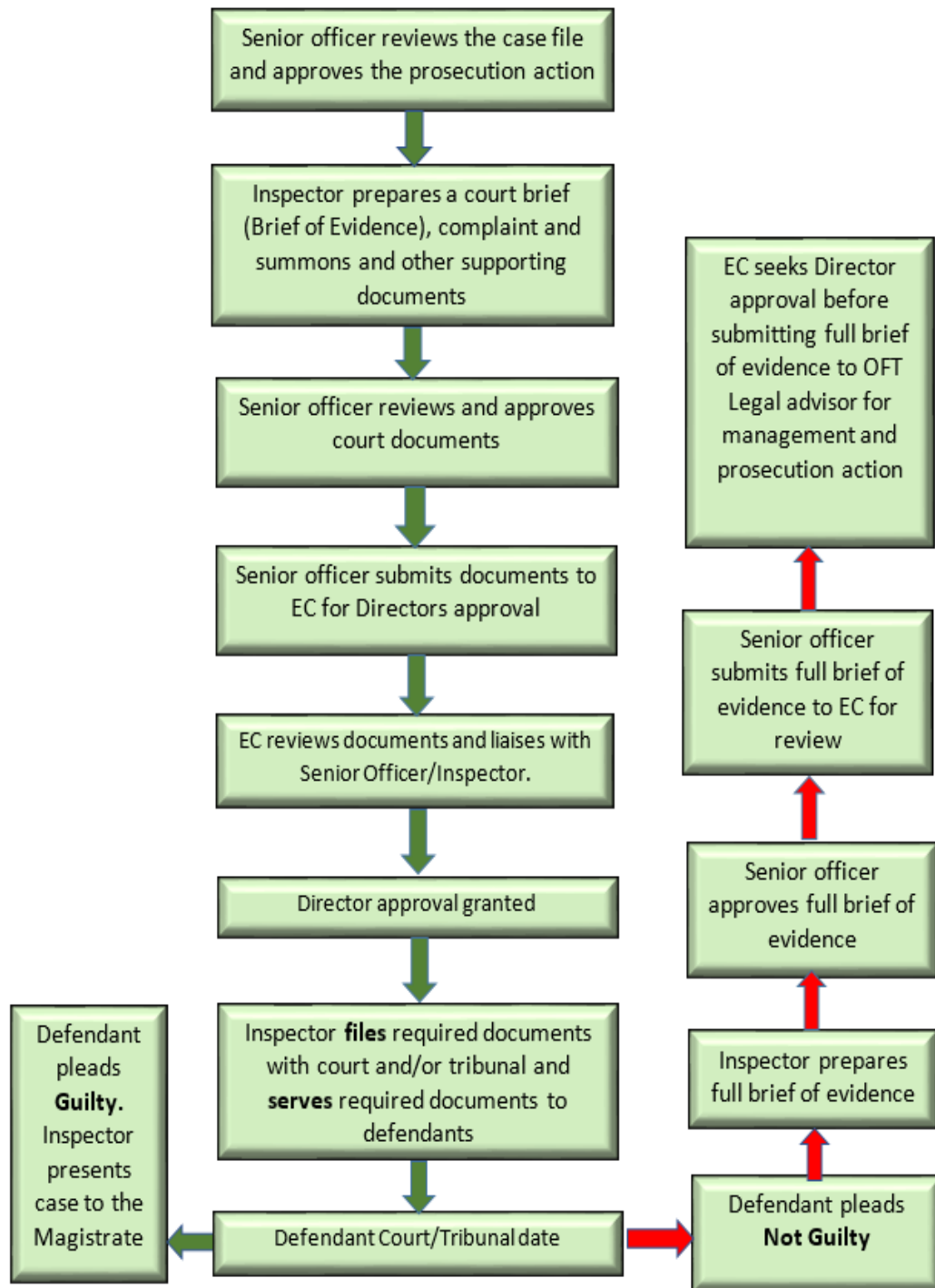
Where a prosecution is no longer warranted, approval from management (refer to band level authority under Annexure D) and consultation with the EC must occur prior to taking any withdrawal action (as instructed by the EC). The inspector must prepare a written report endorsed by management and for approval by the divisional director. The report advising of a withdrawal must contain:

- The reason for withdrawing or offering no evidence in relation to the charge
- The name(s) of the OFT officer providing the authority, and
- The names of the person(s) with whom consultation took place concerning the proposed intention not to proceed with the charge



15.25 A REVIEW OF THE AUTHORITY TO PROSECUTE PROCESS

The following flowchart shows the appropriate steps to gain 'Authority to Prosecute'.



As approvals are gained, the complaint and summons lodged and served and as court action progresses, the status of the Legal Action Report in MACS must be updated accordingly. Any court date changes must be emailed to the EC as soon as possible.



16 THE INITIAL PROSECUTION PROCESS

The initial prosecution process commences on the first mention date and continues during any subsequent mention dates until the defendant either pleads guilty and is sentenced, or elects to contest the matter at which time a hearing date will be scheduled.

Inspectors can prosecute matters to the point a defendant enters a not guilty plea after which a legally qualified officer from OFT's Legal Unit, Crown Law or a barrister from a Private Bar must continue the proceedings. Either way, there are general principles which are applicable to both situations.

Inspectors can confer with their senior officer regarding who will prosecute matters. Best practice is to have an experienced inspector or senior officer prosecute matters until sufficient experience and knowledge is obtained by a new inspector.

16.1 ROLE OF THE PROSECUTOR

A prosecutor's first duty is as a servant of the court. The prosecutor must ensure the court is not misled and conduct each case strictly in accordance with the law and consistently with its ethical obligations.

The prosecutor's second duty (as the complainant) is to their client, the OFT. The prosecutor's obligation is to conduct each case vigorously, justly and consistently.

16.1.1 Prosecution disclosure of information

As a government regulator, the OFT is bound by rules of disclosure. The OFT discloses certain information to the defence in accordance with the Justices Act prior to a court appointed mention date. If a not guilty plea has been made by the defendant on the mention date, the OFT will prepare information (including a full court brief) as directed by the presiding Magistrate. The disclosure provisions of several Queensland legislative requirements are enacted and disclosure will follow.

Disclosure of any case information or documents relating to a proposed prosecution must be determined and approved by the EC. Therefore, inspectors must consult the EC in this regard.

16.2 ROLE OF THE DEFENCE

A defendant may be self-represented or be represented by a solicitor, barrister or both. Like the prosecutor, the defence's first duty is to the court.

The Queensland Law Society and the Queensland Bar Association both lay down ethical guidelines which practitioners must comply with.

Under the common law system, the defendant is entitled to the presumption of innocence. Therefore, the defence is entitled to rigorously test evidence presented against the defendant.

16.3 ATTENDING COURT

All courts and QCAT must be treated with great respect. They are very formal places and there is an expectation OFT officers will behave in a respectful way and follow the rules of [courtroom etiquette](#).

16.3.1 Standard of dress

Presentation and conduct while attending court should be one of confidence and a professional image. Conservative suitable clothing is described as trousers, shirt, tie and coat for males and a tailored dress, knee length skirt or trousers with a tailored top for females. Socks/stockings and shoes relevant to the clothes must also be worn appropriately.



Makeup should not be excessive and in keeping with a corporate image. Jewellery should not be too “chunky” or “jangly” as this can create noise or other distractions, particularly in relation to recording equipment.

When in a courtroom inspectors must comply with directions given by the presiding judicial officer on appropriate dress which must be appropriate to:

- the function performed
- occupational health and safety requirements
- equality of employment opportunities and anti-discrimination principles
- cultural diversity
- climate
- local community standards

16.3.2 Personal conduct

Inspectors must always conduct themselves in a **quiet, courteous and professional manner**. Any dealings with parties to proceedings, including defendants, legal representatives, the Magistrate and court staff, must be timely, courteous, and professional.

All conversations, not part of the matter before the court, are to be held outside of the court room. Any necessary conversation in a courtroom should not distract others or court proceedings.

When entering or leaving the court always bow to acknowledge the crest displayed behind the judicial officer. This demonstrates respect to the court system.

There must be no eating, chewing gum, drinking beverages, no sunglasses visible and no reading of non-court related documents such as magazines whilst court is in session.

16.3.3 Addressing parties to proceedings

Always refer to the Magistrate or Judicial Registrar as ‘Your Honour’. The title is a sign of respect for the position and reflects the formal nature of the office.

At all times Barristers, Solicitors, Articled Law Clerks, Law Clerks and all others are referred to as Mr, Mrs, Miss or Ms. If not immediately apparent, use Sir or Madam.

To demonstrate non-bias, even if the person is known on personal or friendly bases, use their formal title. This shows respect to the court and their position within the judicial process.

Members of the Police Service must be referred to by their rank followed by their surname.

16.3.4 Order of appearances

Depending on the Magistrate, matters are usually called on in the following order:

- Mentions
- Adjournments
- Pleas of guilty
- Guilty in writing
- Ex parte matters
- Bail forfeitures
- Failures to appear
- Hearings (matters that are recorded including committals)

The Magistrate has full discretion to which order cases are dealt with. Matters can be called upon at any time, with senior legal representatives usually having their matters mentioned first. The normal order of appearance is:

- Barristers
- Solicitors
- Articled Law Clerks
- Law Clerks



- All others

16.3.5 Opening and closing of court sessions

The Depositions Clerk will open and close the court and will state the following:

- To open the court - *"Silence, all stand please."* Once the Judicial Officer has reached their seat - *"This Magistrates court is open"*. Once the Judicial Officer sits – he or she will say *"Please be seated"*.
- To adjourn the court - *"Silence, all stand please, This Magistrates court is adjourned."*
- To resume the court - *"Silence, all stand please"*. Once the Judicial Officer has reached their seat - *"This Magistrates court is resumed."* Once the Judicial Officer sits - *"Please be seated"*.
- To Close the Court - *"Silence, all stand please, this Magistrates court is closed."*

The court is only opened and closed once a day. Cases which have been partially heard upon closure of the court will be resumed the following day.

16.4 BE PREPARED

Magistrates' deal with lots of different matters and may not be familiar with all OFT legislation. Inspectors must always prepare a case with care and:

- be familiar with the legislation for the prosecution and in particular the penalty regime and maximum penalties
- ensure a neat, tidy and up to date copy of the relevant legislation is on hand so it can be provided to the Magistrate, if required
- ensure relevant pages of the Act are tagged for ease of reference

Also be aware of recent amendments to legislation. Although a case may predate any recent legislation changes, the defence may raise legislation changes to try and weaken a prosecutor's case.

16.4.1 Be early

Always be **at least** 15 minutes early and approach the clerk before the official opening of the court and check the file is in court. Inspectors must advise the clerk of their name and that they are appearing as the complainant for the OFT. After identifying themselves, inspectors must:

- obtain the Magistrate's name. (This is for the purpose of reporting to the EC and OFT's media unit)
- inform the clerk if the defendant is present or not, or has pleaded guilty in writing
- take a seat at the back of the court

16.4.2 Possible outcomes in court

Where the matter is listed for the initial appearance, there are seven possible scenarios that could arise:

1. **The defendant appears and pleads guilty** - the matter is dealt with by the court and the court brief will be used to inform the court of the circumstances of the matter and to suggest an appropriate penalty outcome.
2. **The defendant appears and pleads guilty but has not sought legal advice** - the Magistrate may decide to adjourn the matter to allow time for the defendant to seek legal advice.
3. **The defence or prosecution request an adjournment** - the matter may be adjourned to another date for mention. Simply meaning the matter is stood over by the court to allow the defence to seek further instructions.
4. **The defendant appears and pleads not guilty and asks the matter be set for hearing** - a summary hearing will be conducted on a date set for such hearing.




5. **The defendant does not appear but pleads guilty in writing** - the matter may be treated in a similar way to scenario 1.
6. **The defendant does not appear but pleads not guilty in writing and requests a hearing date** - the matter may be treated in a similar way to scenario 3.
7. **The defendant does not appear but requests an adjournment in writing** - the matter may be treated in a similar way to scenario 2.
8. **The defendant fails to appear** - In this case the prosecutor may make an application to hear the matter in the absence of the defendant (ex parte).

16.5 APPEARANCE BY DEFENDANT

Where the defendant appears in court, the Magistrate will ask if they understand the complaint. If they say yes, the Magistrate will ask the defendant what they wish to do with the matter. The defendant may:

- plead guilty
- seek an adjournment for a further mention date
- plead not guilty and ask for the next date to be a full hearing

For an adjournment the Magistrate will seek to set a date suitable to all parties.

 Inspectors should be aware of the availability of court call over dates and the availability of OFT's legal advisor and all witnesses in order to advise the court of an appropriate hearing date and to avoid having to change dates after the mention date.

16.5.1 Unrepresented defendant

Take particular care where a defendant does not have legal representation. There is an added duty of fairness, plus one of keeping the defendant properly informed of the prosecution case. The following should be adhered to:

- Avoid contact with the defendant unless they are accompanied by a witness
- Full notes should be promptly made in respect of any:
 - oral communication
 - information and materials provided to the defendant
- Any admissions made or communication of concern should be recorded and mentioned in open court as soon as possible

Do not advise the defendant about legal issues, evidence or the conduct of a defence. The Magistrate's duty is to do what is necessary to ensure the unrepresented defendant has a fair trial.

16.5.2 No appearance by the defendant (ex parte)

Where the defendant does not appear in court, the prosecutor can make an application to the Magistrate to proceed ex parte under the Justices Act and may need to satisfy the Magistrate the Justice Act is appropriate as it allows:

- the complainant to be a public officer (142A (4) (a))
- the summons to be served at least 14 days (21 days if service by registered post section 56(1) (a)) prior to the mention
- the court copy of the complaint to have completed deposition on oath of the service (section 56 (5)) making such a deposition sufficient proof of service of the summons
- before the first return date, reasonably sufficient particulars to be set out, or annexed to, or served with the complaint and summons (section 142A (4))

Be aware the court **will not proceed ex parte** if:

- the OFT is seeking a licence or registration disqualification, suspension or cancellation order (section 142(2)(a))
- the court does not consider a cancellation or suspension order may be appropriate (section 142A(6)(b))



If the Magistrate is satisfied the matter can be dealt with in the defendant's absence, the facts must be read to the court proving each element of the charge. The facts should be in a format easy for the Magistrate to understand and follow. The facts should also include circumstances relevant to the appropriate level of penalty to be imposed by the court.



It is important to note case files for matters heard ex parte, must be held on site within OFT for a period of 2 months.

16.5.3 Re-hearing

Where a court convicted a defendant in their absence, the defendant may, under the Justices Act and within two months of the determination, apply to the court for a re-hearing. Where the court agrees to a re-hearing, it will have all the powers and procedures it has for an original hearing.

If, however, the defendant does not appear at the re-hearing, the court may, without actually re-hearing the case, direct the original order be restored.

Whether the court grants a re-hearing is a matter of discretion for the court.

The EC should be consulted if notice of such an application has been received and inspectors must be prepared to alert witnesses to the possibility of a re-opening.

16.6 DEFENDANT IS A COMPANY

If the defendant is a company the process is the same. However, the person representing the company (if not counsel or solicitor) must be a director (as identified on the company extract) or carry written authority to appear and speak on the company's behalf.



Section 181B (3) of the *Penalties and Sentences Act 1992* provides if the defendant is a corporation and is convicted of an offence, then the maximum prescribed penalty, contained within the legislative provision, is increased to **five times** the amount. This fact should be included in the penalty submission made in court.

16.7 PLEA OR ADJOURNMENT

16.7.1 Guilty Plea

Where the defence pleads guilty and the Magistrate is satisfied the matter can proceed, the facts in brief and the penalty submission are presented to the Magistrate. The facts should be in a form easy for the Magistrate to understand and follow and should include circumstances relevant to the appropriate level of penalty to be imposed by the court.

Case submissions are made at a moderate pace to allow the Magistrate to record and digest the information. The court only needs a sufficient outline of the facts to ensure each element of the offence is satisfactorily proven and any obvious defences/exemptions negated. If the Magistrate requires specific detail of an element, they will generally ask or prompt for more information.

After the facts have been presented, the Magistrate will ask the defence if they agree with the facts. If the facts are disputed, the following may arise.

- **A severe dispute** - The Magistrate may remove the defendant's guilty plea and set the matter for hearing
- **Dispute affecting a penalty** - The Magistrate may require the prosecutor to present evidence on the point in question. This may require an adjournment to allow the prosecution to produce the evidence or witness
- **A minor dispute** - The Magistrate may either attempt to reconcile the facts through discussing with both parties or alternatively disregard the discrepancy



In most cases the defence will agree with the facts and then make a submission about the circumstances of the case from the defendant's perspective, raising any mitigating factors. The defence will usually make a penalty submission at this time as well.

The Magistrate may ask the prosecutor for penalty submissions immediately after hearing the facts or alternatively may wait until after hearing the defendant's penalty submission. The prosecutor must wait to be invited to present penalty submissions and comparative penalties so the prosecutor does not appear to be presuming the Magistrates' decision.

16.7.2 Not guilty Plea

A plea of not guilty generally indicates the defendant refutes the allegation and intends to contest the matter. The court will assign a date (or dates) for a full hearing of the matter. They may also set an interim date, a further mention, prior to the trial to confirm the defendant maintains a not guilty plea after being able to review all of the evidence.

At this time, it is important to bring to the attention of the Magistrate any hearing date restrictions for the case inspector, witnesses or the OFT's legal advisor.

Always ensure the hearing is listed a **minimum of 8 to 12 weeks** away to allow time for the preparation and service of a full court brief of evidence and arrangement of travel and accommodation for witnesses. This timeframe also allows sufficient time for the OFT's legal advisor to become fully aware of the matter.

A full court brief of evidence must be provided to the defendant. The court may order a date by which the full court brief must be served. Alternatively, a date can be agreed to with the defendant. However, it is good practice for an inspector to anticipate a not guilty plea outcome at any mention and have a suitable date in mind which takes into account their availability, prior commitments and leave arrangements to ensure sufficient time is allowed for the full court brief to be prepared.

The inspector should also confirm with the EC how the full court brief will be served, either to the defendant directly or their solicitor. Addresses and contact telephone numbers should be confirmed.

16.7.3 Adjournments

The defence or the prosecution may apply to the court for an adjournment for a number of reasons including:

- to allow the defence to seek legal advice or further prepare for the case
- to allow the prosecution to obtain details of compensation or restitution
- witnesses on either side are not available
- negotiations may be underway which could see the case resolve itself

Generally the first adjournment is granted as a matter of course. Subsequent adjournments are often granted, but as time passes the court needs to be presented sound grounds as to why each adjournment should be granted. Courts do not tolerate endless adjournments and if not already set for hearing, will set a matter for hearing if the parties continue to persist with adjournments.

Wherever possible, the inspector being a public servant and model litigant should endeavour to be ready to proceed at the first hearing date.

16.7.4 Notifications

After each mention the inspector must provide an email update to the EC, their senior officer and OFT Media to confirm the current status. This will ensure all current reports are updated and all relevant parties are aware of tasks to be completed and timeframes to be met. In the event of a not guilty plea the EC will also update the Legal Services Officer so their availability for the hearing dates can be secured and they are aware a brief of evidence will be forwarded to them.



17 FULL COURT BRIEF

Where a defendant pleads not guilty and intends to defend a matter, a full court brief must be completed. If proceedings have already begun under an original court brief and the offender has decided to defend a matter, a more comprehensive presentation of the evidence is required to form a full court brief of evidence.

The inspector should refer to the [Full brief of evidence compilation guide](#) to ensure the EC is provided with all required documentation. This indicates what information must be included and how it should be presented.

The full court brief must be checked by a supervisor for sufficiency of evidence prior to being submitted to the EC who will consult the OFT's Legal Unit as required. The EC must be given **no less than four weeks** to review the case.

The full court brief must be comprehensive of all details relevant to the case and must specifically contain all the evidence relied upon on to prove the offence during proceedings.

17.1 FORMAT OF A FULL COURT BRIEF

A full court brief consists of the following documents:

- A [full brief of evidence comment sheet](#) (to be completed by the inspector and their senior officer) which should include (by way of an attachment) any other ancillary or background information the inspector believes the prosecutor should be made aware of and which is not clearly evident in statements.
- A witness list (see section 17.4 of this chapter)
- An index to the full court brief (see section 17.2 of this chapter)
- A copy of the initial court brief (if applicable)
- A copy of any relevant complaint and summons
- Any comparative documents, compensation or order application documents
- The investigating (case) officer's statement which should include information to indicate the offender declined to give evidence in an interview, if applicable.
- All statements by other OFT officers involved in gathering evidence
- All statements taken from every non OFT witness
- A written report from a qualified expert witness (if required)
- All exhibits including:
 - Transcripts of recorded interviews and or a photocopy of written or typed record of interview
 - Evidence Certificates
 - Copies of any relevant ancillary documents and visual information

17.2 INDEX TO A FULL COURT BRIEF

The full court brief should commence with the Index to brief document. This provides the prosecutor with a summary of the content of the brief and allows them to locate exhibits quickly during a hearing. The [index to brief template](#) is to be used.

The first page of the index will provide an overview of the matter providing vital data such as:

- The court and date of appearance
- Inspector/s name and contact details
- The defendant, including descriptive details if available (Full name, D.O.B, address)
- The short title, statute and section number of legislation of charges preferred

The index also provides details of:



- All OFT officers involved
- All witnesses that can be called
- All exhibits to be produced and by whom
- Precis of Evidence (if applicable, see below)

17.3 PRECIS OF EVIDENCE

A precis of evidence is included in the Index to Brief and is used to provide a summary of the facts the prosecution intends to rely on to prove the charges. It is a brief summary of pertinent points for each witness statement and the exhibits to be produced. The precis should alleviate the need for the prosecution to review every piece of information, unless a specific need arises to look at any particular piece of evidence.

The independent [precis of evidence template](#) located on the intranet must be used where there are 6 or more witnesses. If there are less than 6 witnesses, including a precis is optional.

17.4 WITNESS LIST

A separate [witness list](#) should be prepared to collate all contact details of all witnesses and document any dates they are not available to attend court. It also allows the inspector to record if a witness summons has been issued. The persecutor will refer to the witness list in court when setting future court dates.

Important Note: The witness list is prepared for internal and court use only. It should not be included or disclosed to the defendant or their legal representative in the copy of the full court brief they receive.

17.5 STATEMENT AND EVIDENCE LOCATION WITHIN THE FULL COURT BRIEF

Inspector statements are placed at the beginning of the full court brief. **External witness statements** must be placed in the order evidence is likely to be given which should reflect the chronological or logical order of events of the offence and sequence of charges. Inspectors presenting statements in a full court brief are to ensure:

- when more than one statement is taken from any witness, all subsequent statements:
 - are included in the full court brief
 - are clearly marked and dated
 - are identified as addendums to the original statement
- all attachments to a statement are clearly and individually identified and introduced in the statement as required
- copies of exhibits secured in the evidence room can be placed on the full court brief. The inspector will take the original exhibits to court as required
- exhibits of bulky documents such as bank statements, should be marked and tagged to show the location of relevant transactions/evidence
- exhibits generated from computer held records is supported by an [Evidence certificate](#) which must be authorised by a representative for the supplier, or the actual supplier, of the computerised evidence at the time it was supplied. All Evidence certificates must be included in the full court brief directly in front of the relevant exhibit
- A 'note for prosecutor' document should be attached to the full court brief outlining any difficulties encountered or expected to be encountered with witnesses, such as:
 - Anything a witness is suspected to know but has not disclosed
 - A witness refusing to sign or provide a statement
 - An incomplete statement (In rare cases, a statement may not have been completed or adopted. For example, witness located in a remote location



17.6 CHECKING THE FULL BRIEF OF EVIDENCE

It is important both the inspector and their senior officer check the full court brief of evidence before submission to the EC to ensure all required documents, statements and exhibits are included and it is indexed correctly. The senior officer should also check and approve the content of the investigating officer's statement and all other OFT witness statements to ensure all relevant information is included and they are of the required standard. Other witness statements should have been checked at the end of the investigation stage.

The **Full brief of evidence comment sheet** is to be completed and signed by both the inspector and senior officer to show the EC all important factors have been considered. The comment sheet must then be attached to the full court brief.

It is imperative a full court brief is completed as a matter of priority and submitted to the EC at the earliest opportunity to provide sufficient time for the brief to be checked by the EC and OFT's legal advisor who will provide approval for the brief to be served to the defendant.

The legal advisor may request further enquiries to be conducted. The inspector is responsible for completing any additional tasks as quickly as possible after which they will report back to the legal advisor. An approval for the brief will be authorised by the Director.

All enquiries should be completed and all evidence served to the defendant within a suitable timeframe. It is not acceptable unless extenuating circumstances exist, which are approved by the legal advisor, for additional material to be forwarded to the defendant after the full court brief of evidence has been served.

A thorough investigation with all evidence secured prior to commencing a prosecution will prevent any issues of this nature arising.

17.7 SERVING THE FULL BRIEF OF EVIDENCE

Only one full court brief needs to be produced to submit for authorisation. Once authorised, two further copies should be made. One copy will be served on the defendant, one copy returned to legal advisor and one copy retained on the case file.



The defendant's copy of the full court brief must **NOT** include:

- the witness list
- any personal details of the witnesses
- the comment sheet

The full court brief should be served in accordance with instructions from the court or agreements made directly with the defendant or their legal representative. It is preferred the brief is served in person. However, if this is not possible it can be served by registered post to a known registered business or home address.

The inspector should prepare two copies of the brief's index and have the defendant check the brief against the index to satisfy themselves all material is included. The defendant must then sign and retain one copy of the index as a receipt.

17.8 ROLE OF THE OFT'S LEGAL ADVISOR

The OFT's legal advisor will use a full court brief to prepare for a hearing. The inspector must be prepared to answer any questions and conduct any other inquiries or tasks as required. Inspectors may also be directed to draft additional documents, such as applications to the court, to apply for witnesses to provide evidence by video link or telephone. In these instances, instructions and advice will be provided to the inspector by the legal advisor and/or the EC.

After the full court brief has been served and the defendant and/or their legal representative have had time to review the material, the legal advisor will correspond with the defendant or



their legal representative to ascertain if they are going to maintain their guilty plea or if an agreement or alternate outcome can be secured. This serves the purpose of having the matter settled in a timely manner and reduces the expense of calling witnesses to the hearing. However, this is not always appropriate or successful. An inspector should be mindful in this regard and that any such discussions or developments require the approval of the unit manager and director who should be updated accordingly.



18 THE QCAT PROCESS

To commence proceedings in QCAT, an Application for Disciplinary Proceedings must be lodged with QCAT (as opposed to a Complaint and Summons for Magistrate court proceedings). Documents for preparing a [QCAT application](#) are located on the OFT intranet.

The Application is accompanied by a **full court brief of evidence** and supporting documentation which must be considered by the EC and primarily approved by the divisional director. The Application and full brief of evidence are then forwarded to the OFT's Legal unit for final review. If OFT's legal advisor is satisfied, all material is sent for final approval by the divisional director who will sign the Application for Disciplinary Proceedings.

The OFT Legal unit will coordinate any Tribunal proceedings with the cooperation and assistance of the inspector or their senior officer. The OFT legal advisor will lodge the Application, **full court brief of evidence** and supporting documentation to QCAT for consideration. The commencement of Proceedings is the date the Application is signed and lodged.

Although only one copy of the documents needs to be completed prior to it being checked and authorised, at least three copies need to be produced for lodging the application. Each copy will be stamped by the QCAT receiving officer who will retain one copy, a copy will be retained by the OFT's legal advisor and the other will be served to the respondent. If there is more than one respondent, further copies will be required.

OFT's legal advisor will liaise directly with the inspector regarding documents for service on the respondent(s). The inspector is to serve the respondent/s with a copy of the Application and other relevant documents as directed by the OFT legal advisor and must complete the QCAT Affidavit of Service which is then provided to the OFT Legal unit.

The OFT's legal advisor is responsible for reporting to the inspector on any tribunal status updates. The inspector must update MACS accordingly and upon finalisation of the matter, complete the enforcement outcome report and provide it to the EC.

18.1 QCAT BRIEFS AND SUPPORTING DOCUMENTS

Preparing a QCAT brief is similar to preparing a full brief of evidence. In addition to the index, the investigating officer's statement, all OFT and external witness statements and all evidence, a QCAT brief must also contain the following documents:

- **Application for Disciplinary Proceedings – Affidavit** - Is a sworn statement by the inspector who will produce the full brief confirming there are sufficient grounds to make the Application and all the facts and circumstances noted are within their knowledge and belief.
- **Application for Disciplinary Proceedings – Annexure A** - Refers to the provisions within the piece/s of legislation relating to the matter and sets out the disciplinary charges being pursued and the grounds for each charge. It also sets out details on orders being sought by OFT for penalty against the respondent. QCAT orders are also set out in some legislation and the inspector should indicate which are relevant to the circumstances of the case.
- **Application for Disciplinary Proceedings – Annexure B** - This document acts to support the grounds specified in Annexure A explaining the evidence that exists to support the charges. It is a detailed summary including background information, relevant parties involved and explains the conduct of the respondent and how the alleged breaches occurred. This document is supported by the investigating inspector's statement which will detail the course of the investigation.
There is no set format for a QCAT Annexure B. How the information is presented will depend on the number and type of breaches alleged and the amount and type of evidence gathered. However, the information should be set out in a structured, logical



and chronological manner starting with background information to confirm who the respondent is, any relevant business information and licensing details. Inspectors should seek advice from their senior officer when completing the QCAT Annexure B to determine a suitable format.

- **Form 9 – Affidavit of service** - Similar to an oath of service for a complaint and summons this document is completed by the inspector who will serve QCAT Brief on the respondent after it is sworn or affirmed in the presence of a JP.
- **Form 22 – Application or referral** - Is the application document submitted to QCAT with the full brief. It should be drafted by the inspector and submitted with the brief documents.

It is important to remember when compiling a QCAT brief that the matter may dealt with by the presiding QCAT representative/s who may only refer to the QCAT brief document without calling any witnesses. Therefore, the format of the annexures, statements, documents and indexing must be sufficient to allow the presiding QCAT officer to fully understand the case and easily locate any documents they need to refer to. It is also necessary to reference pertinent statements, along with the reference number of relevant documents alongside individual facts within the QCAT Annexure B.



19 PROSECUTION WITNESSES

19.1 SUMMONSING A WITNESS

Where a defendant has entered a not guilty plea, the matter is to be heard at a full hearing and witnesses will be required to attend court.

The inspector is responsible for facilitating the appearance of all witnesses who must be given as much advance notification as possible of the date and time they are required to appear in court. This can be done by telephone or email in the first instance however, inspectors must also arrange for the service of a witness summons to all civilian witnesses.

(OFT officers required as witnesses do not have to be summonsed). The inspector is to ensure the summons is served as soon as reasonably practicable. If a witness is unavailable the inspector is to immediately advise the EC and OFT's legal advisor.

The following table provides a guide to summonsing a witness.

Witness	Legal requirements	Actions
Queensland witness	Summons - Section 78 of Justices Act provides the power to issue a summons to a witness	<ul style="list-style-type: none">Complete an original and three copies of the Summons of a witness formSeek JP authorisation of the summonsServe the summons to the witness 14 to 21 days prior to the hearing and complete the oath of service (without signing it) after serviceAttend at a JP or Commissioner for declaration to sign and swear out the oath of serviceRegister the summons with the clerk of the court within 3 days of service
Interstate witness	Subpoena – Part 3 Service of Subpoenas generally, of the Service and Execution of Process Act 1992 (SEPA)	<ul style="list-style-type: none">Complete an original and three copies of the Summons of a witness form which will be considered a 'subpoena'Follow the process described in the previous action box for a Queensland witness.
Overseas witness	N/A however, consider section 83A (d) of the Justices Act.	Inspectors must speak with their manager and the EC if considering an overseas witness.

19.2 WITNESS CONSIDERATION

Where, witnesses are required to travel long distances or personal circumstances make it difficult for them to attend court, consideration should be given to making an application to the court to provide evidence by alternate means.

Section 83A of the [Justices Act](#) allows for receiving evidence or submissions by telephone, video link or other form of communication. The inspector must seek the advice from the EC to determine if such an application should be made and the process for doing so.

19.3 PREPARING A WITNESS FOR COURT

The inspector in charge of the case should maintain contact with witnesses in the period leading up to a hearing to ensure they are prepared and to address any issues which could affect their ability to attend court. The inspector must also keep witnesses up to date with any developments, changes or cancellations in a timely manner.



Court can be an intimidating forum and it may be necessary to answer questions, advise of the requirements and reassure witnesses.

It may have been a long time since the events the witness is speaking to occurred. They can be directed to review their statement prior to attending court to refresh their memory. However, they must be advised they will not be able to refer to the statement in court.

If the witness has maintained possession of the original documents referred to in their statement, they need to be reminded to bring these to court with them. Such items should be detailed on the summons document.

For the day of the hearing the inspector must nominate another OFT inspector as a liaison officer to be present to meet, communicate and direct the witnesses. The liaison officer should also communicate with the prosecutor so they know the order for calling witnesses and ensure they stay within the delegated waiting area until directed to enter the court.

For questions relating to providing evidence and cross examination refer to Chapter 20.

19.4 WITNESS ARRANGEMENTS AND EXPENSES

All costs associated with travelling, accommodation and meals for witnesses to attend court must be paid by the OFT unit responsible for the prosecution. The inspector must:

- arrange for an interpreter or translator if required (at the expense of the OFT)
- arrange witness travel and accommodation (in accordance with section 32 'Expenses' of [SEPA](#))
- ensure witnesses are advised of travel and accommodation arrangements as soon as possible
- arrange any witness allowance payments
- prepare a [Witness expense form](#)
- ensure the witness completes the 'Declaration in support of claim for expenses as Crown Witness' section of the Witness expense form

The OFT unit's administration officer can assist with arranging travel and accommodation payments prior to the hearing. Completed witness expense forms can be submitted for payment as soon as the witness's obligation to the court has been fulfilled.

19.5 WITNESSES MUST NOT DISCUSS EVIDENCE

Discussions or communications between witnesses about evidence to be given in a proceeding or during the hearing, may diminish a witness' credibility and influence their recollection of events. If witness evidence becomes discredited, its reliability is decreased.

Prior to or during the course of a hearing, inspectors must ensure witnesses, including OFT witnesses, who:

- are required to give evidence in those proceedings or trial, or
- have not completed giving evidence, or
- have given evidence and are excused from further attendance

do not discuss the evidence given or to be given, or questions asked in cross examination or re-examination with other witnesses required to give evidence. Conduct of witnesses during a hearing is elaborated on at Witness conduct.

Unless otherwise directed by the prosecutor, witnesses, including OFT witnesses, must remain outside the precincts of the court so they don't hear the court's proceedings.



19.6 PROPERTY IN WITNESS

'Property in a witness', means a witness does not belong to either the prosecution or defence. A court has the primary duty to ascertain the truth. Therefore, neither the prosecution nor the defence are entitled to prevent the other party from ascertaining the truth by communicating with a witness before court. However, witnesses are not required to speak to the other party.

The prosecution is not required to give a defendant or their lawyer any 'witness contact details' unless it is materially relevant as part of the evidence for the relevant proceeding. The address of a witness to a third party is not to be provided without prior approval from that witness.

19.7 WITNESS CONDUCT

Conduct of a witness when giving evidence in the witness box can impact on their own credibility and the credibility of the case itself. Some sound general rules for a witness are:

- Speak clearly and audibly
- Remain calm at all times
- Take time to digest any questions raised and consider the proper answer
- Acknowledge that the question being asked is fully understood, or seek clarification if the question is not clear
- Be courteous to the Magistrate or judge and all those at the bar table
- Do not slouch in the witness box
- Attend court appropriately attired

19.8 PITFALLS TO AVOID AS A WITNESS

There are a number of pitfalls witnesses should try to avoid:

- Failing to answer the question asked - It is better to simply answer the question
- Volunteering unnecessary information – Limit response to simply answering the question
- Giving yes/no answers to **complex questions** - A simple yes/no answer in this case may mislead the court. Explain it is a complex question and give a fuller response
- Overuse of technical jargon - Use technical jargon only where necessary and with good explanations in layman terms
- Sarcastic or know-it-all responses - Avoid altogether
- Agreeing with incorrect summaries or quotes made by the cross examiner - Correct the cross examiner - *'No, what I said was...'*
- Failing to correct earlier mistakes in their evidence - Correct earlier incorrect evidence as soon as the error is realised
- Guessing answers when unsure - Don't guess, say *'I can't recall'* or *'I don't know'* or ask to refer to notes or other relevant documents if applicable
- Attempting to answer overly long or compound questions - Ask the cross examiner to rephrase or restate the question, and answer it in parts
- Avoid being overtly critical of colleagues/peers altogether
- Talking to other witnesses - Be honest about any conversations with other witnesses

19.9 OFT OFFICER AS A DEFENCE WITNESS

OFT officers who are called to give evidence for the defence in criminal proceedings should notify the EC and the OFT Legal unit of the proceedings in writing. The proceedings must be in relation to any matter which has arisen from the officer's performance of duty. Notification should be made as soon as practicable once officers are advised by the defence that they are to be called as a defence witness.



An OFT officer called to give evidence for the defence is to inform the prosecuting authority of the evidence that officer will give in the proceedings. Wherever practicable the officer is to supply the prosecuting authority with a copy of any statement or affidavit supplied to the defence.



20 THE HEARING

A 'hearing' in the Magistrates court (as opposed to a 'trial' before the District and Supreme courts) involves the prosecution presenting all the evidence it intends to rely on to prove the defendant is guilty of committing the alleged offence.

It is a fundamental tenet of the Common Law system that a person accused of an offence should have the opportunity to hear and test the evidence said to confirm their guilt. Thus the defence is entitled to hear all the evidence the prosecution relies on.

20.1 OPENING STATEMENT

Opening statements are almost always made by both sides in trials before the District and Supreme courts however are relatively uncommon before a Magistrate court.

In opening, the prosecution and defence counsel outline their case, identifying the witnesses they will call and what each witness will say. Each seeks to highlight what they perceive as the strong points of their case and minimise any potentially weak areas.

20.2 VOIR DIRE

A voir dire is essentially **a trial within a trial**, conducted in the absence of a jury so a judge can decide, when evidence has been objected to and if that evidence is to be admitted or not to be admitted. Once decided, it can determine the outcome of the hearing. For example, the defence may argue that admissions made by the defence while speaking to inspectors should be ruled inadmissible because the inspectors were unlawfully on private property at the time the evidence was obtained.

A voir dire involves the calling of the witnesses relevant to **a particular point in issue**. The witness gives their evidence and is then subject to cross examination. The judge or Magistrate then determines the question of law that has been raised.

The admissions made by the defence may be the prosecution's main piece of evidence against the defendant and therefore if excluded, the prosecution may have no option other than to offer no further evidence and ask that the matter be struck out.

20.3 PRELIMINARY LEGAL POINTS

On some occasions, preliminary legal issues may be raised by either side. These are usually dealt with before the prosecution case commences. For example, a jurisdictional issue may arise which requires resolution to ensure the court has jurisdiction to hear the case.

20.4 NO CASE TO ANSWER BY DEFENCE

On some occasions the defence may make a no case to answer submission. Essentially a no case to answer submission is the defence saying to the court there is no evidence against one or more elements of the offence. In effect the defence is saying the prosecution does not have a prima facie case.

In *May v O'Sullivan* (1955) 92 CLR 654 The High Court of Australia laid down the test to be applied when a no case to answer submission is made saying "the question to be decided is not whether, on the evidence as it stands, the defendant ought to be convicted, but whether on the evidence as it stands he could lawfully be convicted."

20.5 THE PROSECUTION CASE

Where the Magistrate decides there **is** a case to answer, the prosecution bears the onus of proving that case and presents its evidence first and calls its witnesses.



20.6 THE DEFENCE CASE

The defence must decide if they intend to call evidence. As the defendant is presumed to be innocent until proven guilty there is no requirement for the defendant to call any evidence. They could simply say nothing and the case will then move to final submissions.

Alternatively, the defence may decide to call witnesses and attempt to present evidence which contradicts that presented by the prosecution.

20.7 WITNESS EVIDENCE AND EXAMINATION PROCESS

Each witness called is subject to the same procedure.

Evidence in chief	<p>Sometimes referred to as “examination in chief”, evidence in chief is the initial provision of a witnesses’ evidence to the court. It is conducted by the legal representative of the side who produced the witness. So in the case of a prosecution witness for example, the evidence in chief would be conducted by the prosecutor.</p> <p>The key feature of evidence in chief is that the legal representative of the party who called the witness cannot ask leading questions except for preliminary or non-controversial points.</p>
Cross examination	<p>The term ‘cross examination’ refers to the interrogation of a witness by the defence or the prosecution. Unlike evidence in chief, leading questions are allowed.</p> <p>During cross examination, the opposing party tests the evidence of the witness seeking to undermine, restrict, clarify or even destroy the weight of the witnesses’ evidence and/or their credibility.</p>
Re-examination	<p>During re-examination the party who called the witness has the opportunity to attempt to clarify points arising out of the cross examination.</p>

Once all witnesses have given evidence and been cross-examined and or re-examined, the prosecution and the defence close their cases.

20.8 FINAL SUBMISSIONS

Both the prosecution and defence counsel have the opportunity to address the Magistrate and summarise their case.

The prosecutor will summarise the evidence which supports each element of the offence and negates any exemptions or defences that might be available to the defendant.

The defence may attempt to persuade the Magistrate the prosecution has not proven each offence beyond all reasonable doubt. The defence may have put forth a defence that warrants the defendant being found not guilty.

20.9 JUDGEMENT

Having considered the evidence and final submissions from both sides the Magistrate gives their judgment. This will encompass the verdict (guilty or not guilty) and their reasons for reaching the verdict. Usually the Magistrate will comment on the evidence of each of the witnesses and any legal arguments put to the court.

There is no room for any further input from the prosecution or defence when the Magistrate begins delivering their judgement. The only option to challenge the decision is on appeal to the court which outranks the court in which this decision is made. For example, a decision in the magistrate’s court would need to be challenged in the District court. Appeals are handled by the OFT’s Legal unit.



20.10 SEEKING A PENALTY AND/OR COMPENSATION

Where the defendant is found guilty the court must consider what sentence to impose. In this regard, the prosecution will present a penalty submission and reply with the information detailed in the court brief penalty submission incorporating any alterations or additional information they think necessary. See section 15.11.2 for required content of the penalty submission.



21 POST ENFORCEMENT ACTION

21.1 POST COURT OR TRIBUNAL MATTERS

When a court/tribunal matter is finalised, the inspector must complete the [Enforcement Outcome Report](#) (EOR) as soon possible and no later than the close of business that day. An EOR must be completed for all matters regardless of their outcome.

An EOR must be endorsed by the inspector's supervisor or manager and sent to the EC, the OFT media team (see 21.1.2) and the Business Manager, Regional Operations and Engagement, where the matter relates to a regional matter. A separate EOR will be completed for each entity subject to court/tribunal action.

The report document is self-explanatory and all applicable fields must be completed to provide an accurate record of the outcome. The background section should provide a brief synopsis of the case. The comments field should contain details of the sentencing comments made by the Magistrate/QCAT to justify the verdict and penalty imposed such as aggravating and mitigating circumstances excluding personal details.

21.1.1 Verdict and judgment

The inspector/legal advisor must contact the court/QCAT and obtain a copy of the verdict and judgement record which is to be saved onto the file and into MACS. A copy should also be sent to the EC.

21.1.2 Media

Media attention is a valuable tool for the OFT because the publicity can help to deter others from performing similar non-compliant activities. The OFT media team will be advised of all prosecution/QCAT matters when they commence. This can be done by emailing a copy of the court brief and complaint and summons, or QCAT application, to OFT media at OFT.media@justice.qld.gov.au when the matter is lodged with the court or tribunal. The OFT media team will prepare a draft media release which will be sent for checking and preliminary approval by the inspector and their senior officer. This pre-drafted statement is held pending the court or tribunal outcome. The OFT media team should be advised as early as possible in more serious matters, or matters that are likely to receive media attention, including before any prosecution commences.

Once a court/tribunal matter is concluded and the verdict is made, the inspector must inform the OFT media team at the earliest opportunity so the draft media release can be updated. At this point the media unit will update the draft release and progress it through approvals, aiming for a same-day release to media outlets. However, final approval of the media statement requires the EOR. Inspectors are required to email the EOR to the OFT media team as soon as possible, meeting the requirements outlined in section 21.1. The OFT media team may be contacted by phone on (07) 3738 8614 or 3738 8616 or email: OFT.media@justice.qld.gov.au.

21.1.3 Other outcome notifications

All complainants and witnesses, if they were not present at a hearing, should be updated as to the outcome of the hearing. Details of the notifications made should be recorded in the case file notes.

21.2 POST ALTERNATIVE ENFORCEMENT ACTION

Enforceable undertaking – As per the [Enforceable undertaking policy](#) and [Enforceable undertaking procedural guidelines](#).

Public naming/public warning – As per the [Disclosure of trader related information policy](#) and related procedure.

Finalisation of official warnings, infringement notices and civil penalty notices is per advice in this manual, the [MACS compliance manual](#) and the [Fines manual](#).

21.3 QUESTIONS BEFORE FINALISING ANY CASE

Officers should be able to answer the following questions before finalising a case:

- Will someone retrieving it in two years' time be able to understand the process and the paperwork?
- Have all the appropriate notifications been made?
- Are there any other actions arising out of the complaint or investigation? One inquiry can often trigger another one. Officers should make sure that they coordinate and link cases and inquiries as need be.
- Is the documentation organised and chronologically filed?
- Has evidence been returned or disposed of appropriately?
- Is the file good enough for internal and external review? A case may become the subject of a random review or a purposeful review by the CMC, Ombudsman or OFT's internal audit team.
- Is the file ready to be sent to storage?

Officers should not part with a case file until they are entirely satisfied they have fully completed all aspects of the file and the file is in a presentable condition.

21.4 COMPLETING AND CLOSING A CASE FILE

21.4.1 Have all notifications been made?

The first thing to consider when closing a file is if all the appropriate notifications have been made. It can be easy to forget to let relevant people know the result of an investigation if they are not the 'central players'. Inspectors should make **a full list of all relevant parties** and ensure they are informed of an outcome.

21.4.2 Is all paperwork in order?

Hard copy files should contain all relevant documents including an index, a case plan, investigation summary, up to date file notes, evidence matrix, court and witness documents if relevant, communication documentation and enforcement documents, review documents and the final senior officer approved checklist (see 21.4.7 of this manual). The hard copy file should be tidy with the contents indexed and tagged, especially for larger files.

The electronic file folder should also be tidy and reflect the indexing on the hard copy file so documents can be easily located.

Any finalisation documents should be uploaded to the external documents field in the MACS file. If file notes have been maintained in separate running log in the electronic file they should also be uploaded to MACS.

21.4.3 Will the file pass a review?

There are various reasons a file may be reviewed including an internal audit review or a review by an external agency such as the Ombudsman. When preparing a file for storage it is good practice to consider the following:

- is the file completed to the required standard?
- will someone retrieving the file in two years' time be able to understand the process and the paperwork and find everything they may need?

If the answer to either of these questions is no, **fix it** before filing.



21.4.4 The MACS record


The MACS record is to be completed with the outcome of the matter and the investigation marked 'finalised'. Amendments to the Legal Action field for court, infringements and enforceable undertakings will be done by the EC or Fines Administrator.

21.4.5 Evidence held by OFT

Any evidence held in the evidence room must be returned to owner or disposed of in accordance with the [Evidence \(exhibit\) and property handling procedure](#).

21.4.6 Complete the final checklist

The inspector must complete and sign a final checklist for complaint and investigation files. There is an **Investigation checklist** in the [CPRM tool](#) which can be completed. A checklist, must be submitted to a senior officer who must complete the 'Approver' part of the checklist before dating and signing the checklist. The inspector can then, print out a copy of the checklist and place it on the physical file. The approved checklist should also be uploaded to MACS.

 The senior officer as the final approver for closure of the file, must complete their part of the checklist. This ensures a proper finalisation of the file for internal auditing purposes as well as assisting in determining record keeping retention periods.

21.4.7 Compliance monitoring after a case

If the outcome of the matter allows for a period of compliance monitoring or an appeal period, the file should be retained by the inspector until the end of that period. For instance, an enforceable undertaking may have a compliance date for the payment of a financial penalty, the payment of compensation, or a date by which other conditions of the undertaking are to be completed. In this instance it is the responsibility the inspector to ensure all conditions are met.

Likewise, for CPNs and infringements, the inspector should retain the file until they are sure the penalty has been paid and the matter is not going to be contested.

21.4.8 Prepare for filing

All OFT officers are responsible for record keeping and must make themselves aware of retention periods for information relating to each of OFT's core functions in accordance with the [Fair Trading Retention and Disposal Schedule](#). Administrative functions fall under the Queensland Government's [General Retention and Disposal Schedule](#).

The correct retention time sticker should be placed on the front cover of the file. These stickers can be obtained from the unit's executive assistant or administration staff. Large case files with multiple folders should be boxed and labelled before submitting for filing in accordance with the internal procedures.

Inspectors should not close or part with an investigation file until they are entirely satisfied they have fully completed all aspects of the file and that the file is presentable.

Category 4 non-enforcement matters may be closed by using file notes, provided they contain sufficient detail. This should cover action taken, recommendations and reasons why the case was closed. This includes completing and filing all paperwork.



Annexure A

OFT inspectors Legislative Authority

OFT inspectors are appointed under various Acts administered by the OFT for the purpose of conducting functions under those Acts. Below provides a brief outline of Acts under which OFT inspectors are appointed.

Fair Trading Inspectors Act 2014 - Section 4 provides for the appointment and powers of inspectors for the primary Acts as noted below. Section 12 of the Act provides for general provisions of inspectors functions under the primary Acts.

- ***Agents Financial Administration Act 2014***
- ***Body Corporate and Community Management Act 1997 (chapter 5, part 2, division 5, subdivisions 2 and 3)***
- ***Building Units and Group Titles Act 1980 (part 4, division 3, subdivision 2)***
- ***Debt Collectors (Field Agents and Collection Agents) Act 2014***
- ***Funeral Benefit Business Act 1982***
- ***Introduction Agents Act 2001***
- ***Land Sales Act 1984***
- ***Motor Dealers and Chattel Auctioneers Act 2014***
- ***Property Occupations Act 2014***
- ***Second-hand Dealers and Pawnbrokers Act 2003***
- ***Security Providers Act 1993***
- ***Tourism Services Act 2003***

Inspectors may also be appointed under the following Acts administered by the OFT:

- ***Classification of Computer Games and Images Act 1995*** - Section 30
- ***Classification of Films Act 1991*** - Section 4(1)
- ***Classification of Publications Act 1991*** - Section 5(1)
- ***Collections Act 1966*** - Section 5
- ***Cooperatives Act 1997*** - Section 382
- ***Fair Trading Act 1989*** (FTA) - Section 9
- ***Tattoo Industry Act 2013*** - An inspector appointed under the FTA is deemed also to be an authorised officer under this Act.



IMPORTANT - Inspectors must ensure they **fully** consider **ALL** of their powers under an Act before carrying out functions under those Acts. The table on the next page provides a **brief** description of **some** of the powers provided to appointed inspectors under two OFT Acts, the *Fair Trading Inspectors Act 2014* and the *Fair Trading Act 1989* (Australian Consumer Law).

<i>Fair Trading Inspectors Act 2014 (FTIA)</i>			
Description	Section/s	General requirements	<i>Some</i> related OFT policies and / or procedures
Exercising a power	18	Inspectors must produce and display their identity card	Inspector appointment procedure
General powers and requirement to enter places	22 – 26	Provides for general powers to enter including entry by consent and incidental entry. Information on what an inspector must tell an occupier and how to obtain consent acknowledgment	Entry search and seizure policy
Enter under warrant	27 – 32	Provides for application of a warrant, issue of a warrant, actions for electronic application and warrant entry procedures	Entry search and seizure policy Applying for and actioning a warrant procedure
Stopping or moving a vehicle	34 and 35	Power to stop or move a vehicle and inspector requirements if vehicle is moving	Entry search and seizure policy – specifically section 10.
General powers after entry	37 – 39	These section provide for what an inspector can do after entering a place and their option of requesting help if needed	Entry search and seizure policy Applying for and actioning a warrant procedure Evidence (exhibit) and property handling procedure
Power to seize and return things	41 – 49	Includes seizing, securing, access and returning evidence seized where the inspector reasonably believes there is an offence against the FTIA or a primary Act	Entry search and seizure policy Applying for and actioning a warrant procedure Evidence (exhibit) and property handling procedure
Power to require name and address	55	An inspector may require a person to state their name and address if the inspector suspects that person has committed an offence under the Act or requires the person as a witness	Entry search and seizure policy Evidence (exhibit) and property handling procedure
Power to require information or obtain a criminal history check	60 and 64	If an inspector believes there is an offence against the FTIA or a primary Act, they may request a person give information about the offence. Inspectors may also request a criminal history check on persons where they believe there is a level of risk	Evidence (exhibit) and property handling procedure Any criminal history check received must be destroyed after viewing. Do not keep on file.



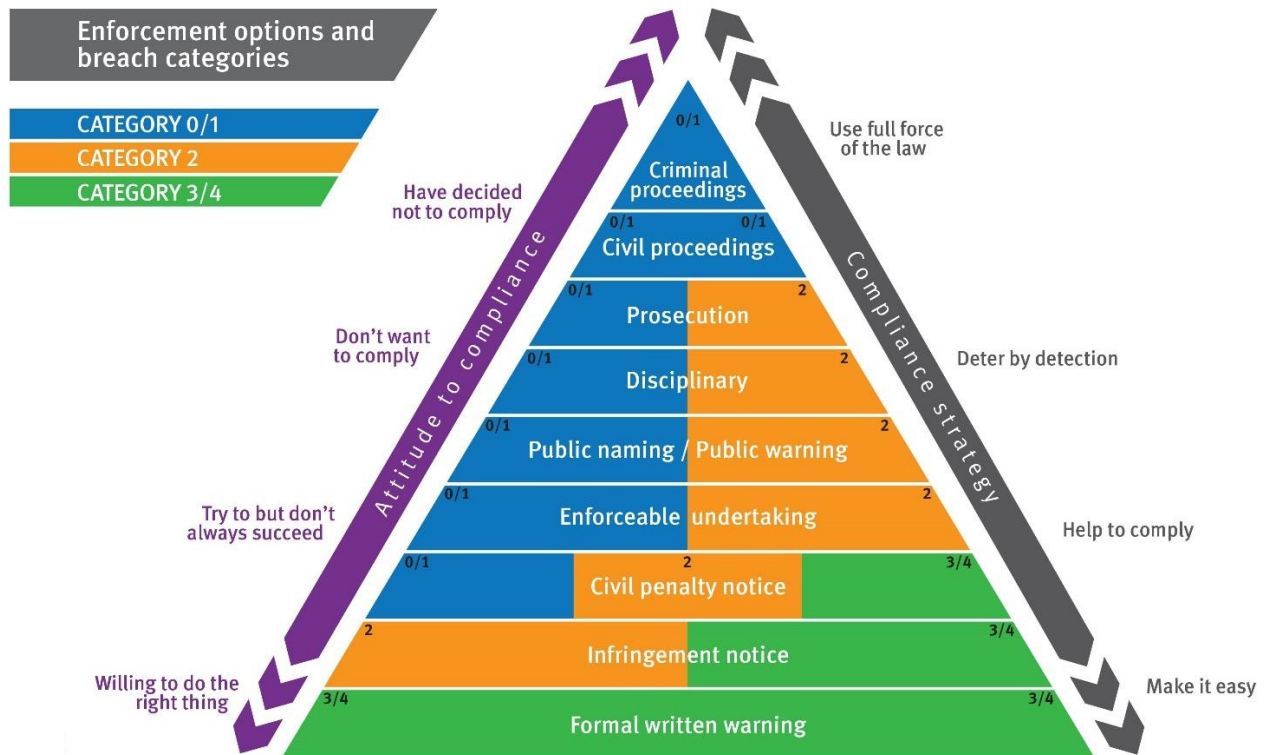
Obstruction	69	An inspector can warn a person that it is an offence to cause obstruction. Obstruction includes assault, hinder, resist or threatening to obstruct	Entry search and seizure policy Evidence (exhibit) and property handling procedure
<i>Fair Trading Act 1989 (Australian Consumer Law)</i>			
Description	Section/s	General requirements	Some related OFT policies and / or procedures
Seizure etc. of goods in certain cases	87	Notes when an inspector can at any time seize and detain goods in certain circumstances. Eg Product Safety matters	Entry search and seizure policy Evidence (exhibit) and property handling procedure
Inspectors powers	89	Includes entry to a place generally, by force or by warrant	Entry search and seizure policy Applying for and actioning a warrant procedure
Power to require name and address	90	This section allows an inspector to obtain any information, records or copy of records from another person	Entry search and seizure policy Evidence (exhibit) and property handling procedure
Power to obtain information/Obstruction/ General power to seize goods/return seized goods	90 – 91B	During enforcement of this Act, an inspector has power to obtain information and records from a person and seize items to decide if a breach of the Act has occurred and return seized items. Persons shall not obstruct inspectors in exercising powers under this Act	Entry search and seizure policy Evidence (exhibit) and property handling procedure
Obstruction	91	A person is taken to obstruct an inspector if the person assaults, intimidate or insults an inspector exercising their powers	Entry search and seizure policy Evidence (exhibit) and property handling procedure



Annexure B

The OFT's compliance model

There are five breach categories – Category 0 to Category 4, rated highest to lowest risk respectively. The model below provides for a general example of enforcement options relevant to breach categories.



Brief category assessment factors

Category 0 – Extreme Risk – Including but not limited to, issues likely to involve systemic and highly serious misconduct by a trader or may involve large scale detriment or relate to a national multi-jurisdictional issue.

Category 1 – Very high Risk – Including but not limited to, issues displaying elements of deceit or dishonesty, false or misleading conduct, consumer detriment and behaviour which seriously impacts on a safe and equitable marketplace.

Category 2 – High risk – Including but not limited to, undermining regulations or consumer protection requirements, risk to disadvantaged groups and failure of product safety standards.

Category 3 – Moderate risk – Including but not limited to, complaints of a minor issue that may evolve into larger issues if not addressed or behaviour that may impact upon the marketplace causing detriment to consumers.

Category 4 – Low risk – Including but not limited to, breaches that can be effectively and efficiently dealt with other than by investigation or behaviour unlikely to impact on the marketplace or cause consumer detriment.



Annexure C

General guide to assessment factors and possible enforcement options

Category	Completion timeframe	Assessment factors (can include but are not limited to...)	OFT Action	Enforcement Options
Category 0 Extreme risk	75% files completed within 365 days	<ul style="list-style-type: none"> potential or actual level of public or political interest in the issue very serious misconduct (for example, criminal or fraudulent behaviour) extent of the conduct, such as the number of complaints and victims and the period of time over which the conduct has occurred does the conduct extends beyond Queensland, or involve an overlap with other marketplace regulators? the novelty of the issue, or whether the issue raised is unique 	<p>Investigation very likely conducted by the Major Investigations unit</p> <p>Prior to completing any documentation relating to enforcement, discussions must be undertaken with the Enforcement Coordinator and / or OFTs Principal Legal Advisor regarding the proposed enforcement</p>	<p>Criminal proceedings Civil proceedings Prosecution Disciplinary action Public naming Public warning Enforceable undertaking Civil penalty notice</p>
Category 1 Very high risk See complexity advice at section 6.7.2 of the CMM	<p>High/Medium Complexity 75% files completed within 180 days</p> <p>Low complexity 75% files completed within 90 days</p>	<ul style="list-style-type: none"> deceit or dishonesty encompassed in a form of deceptive, false or misleading conduct. unconscionable actions behaviour is almost certain to seriously impact on a safe and equitable marketplace and would cause serious and considerable detriment to consumers and industry alike misappropriation of trust account monies asserting the right to payment for unsolicited products and subsequently receiving monies odometer tampering misrepresentations about vehicle 	<p>Investigation very likely to occur</p> <p>Prior to completing any documentation relating to enforcement, discussions must be undertaken with the Enforcement Coordinator and / or OFTs Principal Legal Advisor regarding the proposed enforcement</p>	<p>Criminal proceedings Civil proceedings Prosecution Disciplinary action Public naming Public warning Enforceable undertaking Civil penalty notice</p>



Category	Completion timeframe	Assessment factors (can include but are not limited to...)	OFT Action	Enforcement Options
Category 2 High risk See complexity advice at section 6.7.2 of the CMM	High/Medium Complexity 75% files completed within 180 days Low complexity 75% files completed within 90 days	<ul style="list-style-type: none"> • potential impact upon a broader range of consumers • behaviour of the trader or the methods used can cause considerable detriment, e.g., advertising in state-wide papers or using telemarketing strategies • real risk to disadvantaged or high risk groups • enforcement action previously taken against the trader by OFT or another fair trading agency. This may include a trader previously operating under another name or employing a person who has been the subject of previous enforcement action • there is an immediate and direct safety risk as a result of failure to meet a product safety standard 	Investigation very likely to occur Prior to completing any documentation relating to enforcement, discussions must be undertaken with the Enforcement Coordinator and / or OFTs Principal Legal Advisor regarding the proposed enforcement. (Not applicable for infringement notices)	Prosecution Disciplinary action Public naming Public warning Enforceable undertaking Civil penalty notice Infringement notice
Category 3 Moderate risk	75% files completed within 60 days	<ul style="list-style-type: none"> • trader has a complaint history within the last 2 years involving a similar type of matter • matter is identified as an emerging issue that has potential to develop into a larger issue in the local or regional marketplace • matter involves numerous alleged breaches, i.e. more than 3 • the matter cannot be resolved by non-investigative means • involves the sale of a product that does not meet an applicable mandatory information or product safety standard 	Likely to be investigated	Civil penalty notice Infringement notice Warning notice



Category	Completion timeframe	Assessment factors (can include but are not limited to...)	OFT Action	Enforcement Options
Category 4 Low risk	75% files completed within 30 days	<ul style="list-style-type: none"> involves a small (3 or less) number of minor alleged breaches likely enforcement outcome if the matter was proven would be a warning can be dealt with effectively and efficiently by non-investigative action complainant/consumer has expressed a desire for no further action behaviour unlikely to impact upon the marketplace by causing detriment to consumers and traders alike resulting in a lack of confidence in regulatory programs. 	<p>May be investigated and enforcement action taken. In some instances, may be effectively dealt with via low level inquiries and alternative OFT action such as:</p> <ul style="list-style-type: none"> Compliance spot check (site visit) Trader education Conciliation referral back to entity for complaint resolution, e.g. pursuant that entity's complaint handling protocol no further action beyond recording the details of the complaint. 	<p>Civil penalty notice Infringement notice Warning notice</p>
Non-investigative matter (Conciliation file)	80% files completed within 30 days	<ul style="list-style-type: none"> No breach of OFT legislation 	<ul style="list-style-type: none"> Conciliation 	N/A

Legislative timeframes – It is **very important** that OFT officers are aware various Acts **may** legislate timeframes to limit **when and by whom** proceedings for an offence can be initiated. Action cannot be taken against an offender after a timeframe noted in an Act has expired.

OFT officers must not assume timeframes for commencing offence proceedings are similar in all Acts but **must fully consider the Act relating to the offence** to ensure timeframes and actioning authorities are conducted in accordance to that Act.



**OFT Band level authority
for the purposes noted in this manual**

Band	Position	Limited to
1	Commissioner for Fair Trading Executive Director, OFT	Unlimited
2	*Director, Complaint and Program Coordination	OFT compliance matters handled by the Complaint and Program Coordination division
	*Director, Investigation and Enforcement	OFT compliance matters handled by the Investigation and Enforcement division
	*Director, Regional Operations and Engagement	OFT compliance matters handled by the Regional Operations and Engagement division
	*Director, Industry Licensing and Registrations	State-wide licensing, registration and claims matters
*	Where a divisional OFT Director is absent or not available, band level authority may be exercised by another OFT Director.	
3	Manager, Marketplace and Financial Investigations Business Manager, Regional Operations and Engagement Manager, Major Investigations Manager, Consumer Product Safety Manager, Case Assessment and Response Manager, Claims and Recoveries Manager, Trust Accounts Principal Financial Investigations Officer Manager, Regional Offices Manager, Program Strategy and Development	Compliance matters where case responsibility reside within the position's area of line management responsibility
4	Principal Compliance and Enforcement Officers Principal Compliance Officers Principal Product Safety Officer Principal Investigations Officers Assistant Principal Compliance Officers Enforcement Coordinator Strategic Planning and Development Officers	Compliance matters where case responsibility reside within the position's area of line management responsibility
5	Senior Compliance Officers Senior Product Safety Officers Senior Investigations Officers Senior Service Delivery Team Leader (AO5)	Compliance matters where case responsibility reside within the position's area of line management responsibility
6	Compliance and Investigation Officers Product Safety Officers Senior Service Delivery Officer/Team Leader (AO4) Service Deliver Officer Assistant Audit Officer	Compliance matters where case responsibility reside within the position's line responsibility. Some officers in these positions may be appointed inspectors



Enforcement Authority

Enforcement action	Authorisation	Level
Warning Notice	Bands 1 – 5	CFT/ED – AO5
Infringement notice <i>Note: Max 5</i>	Bands 1 – 4	CFT/ED – AO6
Civil penalty notice (Australian Consumer Law) <i>Up to 3 CPN's issued to</i> <ul style="list-style-type: none"> Individual Non-listed body corporate Listed corporation 	Bands 1 – 4 Bands 1 – 3 Bands 1 – 2	CFT/ED – AO6 CFT/ED – AO7/AO8 CFT/ED – DIR
<i>Over 3 CPN's issued to any entity</i>	Bands 1 – 2	CFT/ED – DIR
Enforceable undertaking	Bands 1 – 2	CFT/ED – DIR
Injunctive action – Court based	Band 1	CFT/ED
Compensation order – Court based application	Bands 1 – 4	CFT/ED – AO6
Non-party redress – Court based application	Bands 1 – 2	CFT/ED – DIR
Adverse publicity order – Court based application	Bands 1 – 3	CFT/ED – AO7/AO8
Non-punitive order – Court based application	Bands 1 – 3	CFT/ED – AO7/AO8
Public warning	Band 1	CFT/ED
Public naming	Band 1	CFT/ED
Safety warning notice	Band 1	CFT/ED
Pecuniary penalty – Court based application* <ul style="list-style-type: none"> Category 0 cases Category 1 cases Category 2 cases 	*(Bands 1 – 2 for discontinuance) Band 1 Bands 1 – 3 Bands 1 – 4	CFT/ED – DIR CFT/ED CFT/ED – AO7/AO8 CFT/ED – AO6
Disqualification order – Court based application	Bands 1 – 2	CFT/ED – DIR
Disciplinary action – Tribunal* <ul style="list-style-type: none"> Category 0 cases Category 1 cases Category 2 cases 	*(Bands 1 – 2 for discontinuance) Band 1 Bands 1 – 3 Bands 1 – 4	CFT/ED – DIR CFT/ED CFT/ED – AO7/AO8 CFT/ED – AO6
Prosecution action (excluding Criminal Code)* <ul style="list-style-type: none"> Category 0 cases Category 1 cases Category 2 cases 	*(Bands 1 – 2 for discontinuance) Band 1 Bands 1 – 3 Bands 1 – 4	CFT/ED – DIR CFT/ED CFT/ED – AO7/AO8 CFT/ED – AO6
Prosecution – Criminal Code	Band 1	CFT/ED
Other: <ul style="list-style-type: none"> Embargo notice Product safety matters 	Bands 1 – 2 Bands 1 – 3	CFT/ED – DIR CFT/ED – AO7/AO8
Substantiation notice	Bands 1 – 5	CFT/ED – AO5

Please Note: OFT officers **must always consider the legislation** under which enforcement action is to be commenced to ensure there are no other statutory requirements to seek approval of enforcement action. For example, from an authorised person (such as the Commissioner for Fair Trading) or their delegate.



2020

Contents

Overview.....	3
Objectives	4
Delivery of OFT objectives	4
Standards	5
OFT inspectorate	6
Education and support to the marketplace	7
Managing risk of non-compliance.....	8
Case assessment	9
Inquiry	10
Enforcement action.....	11
Breach categories	12
Review process.....	13
Accountability	14
Related OFT policies.....	15



Overview

The Queensland Office of Fair Trading's (OFT's) goal is to achieve a fair and safe marketplace. We recognise that most businesses want to comply with the law and to facilitate this we follow an escalation model of compliance and enforcement. As a trader's attitude to compliance deteriorates, our regulatory response escalates.

We are responsible for the administration of numerous pieces of consumer protection legislation, including laws which regulate specific industries.

This **Compliance and enforcement policy** (CEP) sets out our framework to administer those laws through education, compliance, administrative decisions, and enforcement activities.

The primary piece of legislation we administer is the *Fair Trading Act 1989*, which incorporates the Australian Consumer Law (ACL).

The ACL is a national law, applied under a multi-jurisdictional model. It is administered at the Commonwealth level by the Australian Competition and Consumer Commission (ACCC) and at the state and territory level by each jurisdiction's consumer protection agency.

Each jurisdiction works together to ensure a consistent approach to compliance and the enforcement of the ACL. Our CEP supports this approach.

To assist us to apply our CEP, we have a suite of policies and procedures to guide its operation. These are reviewed annually or following legislative or procedural changes.

It is important to note that this **CEP is not a legal document** and should not be relied on as such. It is a **guide** and it does not limit our discretion to take any action it considers necessary or appropriate under the legislation we administer.

For a list of laws administered by the OFT, visit the **Queensland Government website**.



Objectives

Our CEP outlines our approach to promoting confident consumer participation in the marketplace and in maintaining, encouraging and enforcing trader compliance with the laws we administer. To achieve these objectives we commit to the following activities:

- Promoting the interests and awareness of consumers negotiating or considering the acquisition of goods or services.
 - Collecting, examining and disseminating information on matters affecting, or likely to affect, consumers in the marketplace.
 - Undertaking awareness activities to assist consumers and traders understand their rights and responsibilities under consumer protection legislation.
 - Responding to enquiries and requests in a fair and unbiased manner.
 - Receiving and considering consumer complaints and, where appropriate, investigating alleged breaches of legislation and taking appropriate risk-based enforcement.
 - Providing accessible and timely access to redress where consumer detriment has occurred and where fair trading legislation allows
- Receive and consider licensing and registration applications and monitor ongoing suitability of licensed industry participants.
 - Taking action to promote and ensure safety in the supply of goods and services.
 - Undertaking timely and effective compliance monitoring initiatives targeting areas of increased consumer risk.

Delivery of OFT objectives

Our activities, including compliance and enforcement, are delivered throughout Queensland via eight regional offices and the Brisbane office.



Standards

Our approach to compliance and enforcement is based on the following standards:

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



OFT inspectorate

In order to perform the full range of compliance, inquiry and enforcement functions, our officers must be appointed as inspectors under legislation administered by us or delegated appropriate decision-making powers. Power to authorise these appointments rests with the Executive Director, OFT, as delegate of the Chief Executive and of the Commissioner for Fair Trading.

Prior to appointment as an inspector, a person must satisfy the Chief Executive of their suitability for appointment, including against criminal history check criteria, and provide evidence of their capabilities to conduct investigative functions.



Education and support to the marketplace

We are focused on delivering consumer and trader education and working with business and industry to achieve compliance with the law.

Marketplace intelligence gathering allows us to improve our knowledge of market conditions and the experiences of consumers and traders.

The key activities we undertake to ensure the marketplace remains informed are:

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

We aim to provide informative advice about the legislation we administer which is relevant to the target audience. However, the OFT cannot provide legal advice. Consumers and traders who need advice about specific issues should consult a qualified legal professional.



Managing risk of non-compliance

We manage the risk of non-compliance in the marketplace through a strategy comprising four key elements, each working together to assess, inquire, address and analyse information concerning suspected breaches of consumer protection legislation.



Case assessment

We obtain information from a range of sources including consumer complaints, external agencies, proactive compliance activity, intelligence analysis, social media and the media.

Our case assessment function considers each matter to determine case complexity, the degree of risk, resources required and the most appropriate action to be taken. Considerations include but are not limited to:

- Jurisdiction.
- Whether a contravention of legislation administered by the OFT for which enforcement action can be taken is likely to have occurred.
- The previous enforcement or compliance history of a trader.
- The potential or actual impact on the integrity of the marketplace.
- The seriousness of the activity and its potential to affect a broad range of consumers.
- The targeting of vulnerable consumers.
- The number of alleged breaches identified about the same or similar conduct or product.
- The attitude and behaviour of a trader in identifying and remedying the issue.
- The adequacy of evidence available to justify commencing or continuing with an investigation or enforcement action.
- The effective and efficient use of resources appropriate to the risk.

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

- conciliation
- referral to a more appropriate agency
- consideration against the Claim Fund
- investigation, or alternatively decline to progress a matter.

Once a matter is underway, if additional information comes to light the assessment may be changed.



Declining to investigate a matter

The OFT may decline to commit compliance resources to investigate a matter; or having commenced, may decide to close the matter. Reasons for doing so include but are not limited to:

- Insufficient information.
- No breach of OFT legislation has been identified.
- The matter does not fall within the OFT's legislative boundaries.
- The matter falls within the jurisdiction of a specialist regulator.
- The matter is being investigated by another agency, or any OFT action may hinder another agency's investigation of issues raised.
- Systemic issues raised require a more strategic approach rather than the investigation of individual complaints.
- There is a very low likelihood of successful enforcement.
- The complainant is not prepared to support their complaint in writing or in court or tribunal proceedings.
- A matter has been lodged with, or heard by, a court or tribunal.
- The trader, complainant or key witnesses cannot be located.
- Suitable compliance action has already been taken against the trader around the same time as the matter came to the OFT's attention.
- The investment of resources outweighs the possibility of a successful outcome.

Conciliation

Conciliation is an informal process we undertake to attempt to resolve consumer complaints about businesses which do not indicate a breach of consumer protection legislation for which we can take enforcement action.

If the conciliation process does not achieve an outcome the complainant considers suitable, they can progress their matter to an appropriate court or tribunal, such as the Queensland Civil and Administrative Tribunal (QCAT).

OFT legislation provides that where a conciliated matter proceeds to QCAT the Tribunal can call for a copy of our file to assist it in its determination of the matter. Alternatively, the consumer can seek independent legal advice about options may be available to them.

Inquiry

Where case assessment determines a breach of legislation, the level of noncompliance and consumer detriment will determine if we undertake an investigation. We will primarily ascertain the facts surrounding the issue, evaluate and secure any evidence obtained and, where relevant, consider appropriate enforcement action.

Investigative action is undertaken with procedural fairness, in compliance with privacy laws, and in accordance with the Department of Justice and Attorney General (DJAG) and OFT policies and procedures.



Enforcement action

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

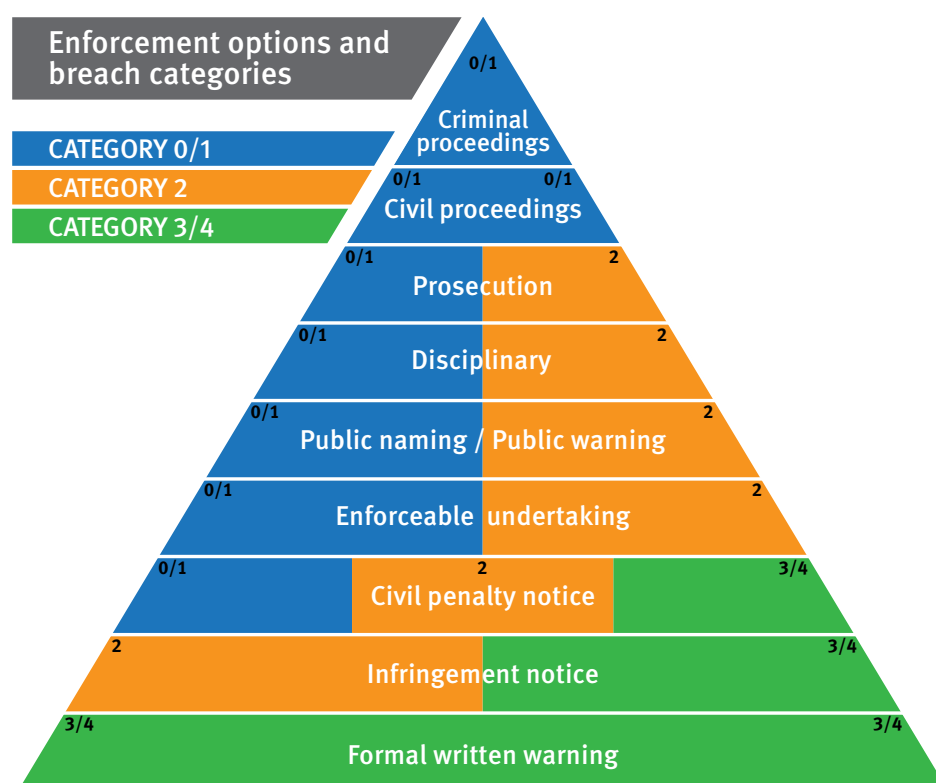
The purpose of enforcement action is to:

- encourage compliance with fair trading legislation
- penalise non-compliant behaviour effectively and efficiently
- encourage traders to apply corrective action for less serious breaches
- penalise traders with stronger enforcement action if they fail to address minor matters
- promote community confidence in the marketplace and in the OFT.

The OFT's compliance model

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

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



Breach categories

For the purposes of case management, we categorise investigation files as outlined below. When categorising a file, we consider the complexity and priority of a matter (low, medium or high) and other factors such as the effect on consumers and the extent of the misconduct. Each category is allocated a completion timeframe that reflects its complexity.

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

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



Non-enforcement action

Matters that fall within the OFT's jurisdiction but do not constitute a breach of legislation, or where an alleged breach is assessed as 'low risk' (Category 4) or the matter cannot be dealt with by legislative enforcement action, are generally classed for non-enforcement action which includes, but is not limited to the following:

- conciliation on behalf of a consumer
- a compliance spot check on the trader
- an educational approach with the trader in the form of a trader visit or delivery of educational material.

Review process

The OFT conducts regular and ongoing case file reviews, as well as a final review upon closure. Minor matters may only require a review upon closure.

Our officers conduct self-reviews throughout the complaint management process to ensure they remain on track.

In addition, supervisors and managers regularly review case files to monitor each matter's progress and provide advice to the relevant officers.

We also regularly review a sample of case files. These reviews allow for examination of our case management practices to ensure performance is reliably maintained. Annual reviews also determine if enforcement action is appropriate and is being consistently applied to secure the most appropriate enforcement outcomes.

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

Information gathered from reviews assists us to analyse our compliance business by helping to identify proactive compliance activity, system improvements and future compliance initiatives.

External requests for a review

Reviews of complaints received about the OFT, its staff or its internal administrative business practices are conducted using DJAG's **Client complaint management policy** which provides for a specific internal review process.

It should be noted, complaints about the outcome decision on a matter do not fall within the scope of the DJAG's **Client complaint management policy**. These matters are reviewed internally by an officer senior to the officer who conducted the matter.

Where a complainant remains dissatisfied, they will be referred to the Queensland Ombudsman, which is the agency responsible for considering issues associated with government agencies decision making.



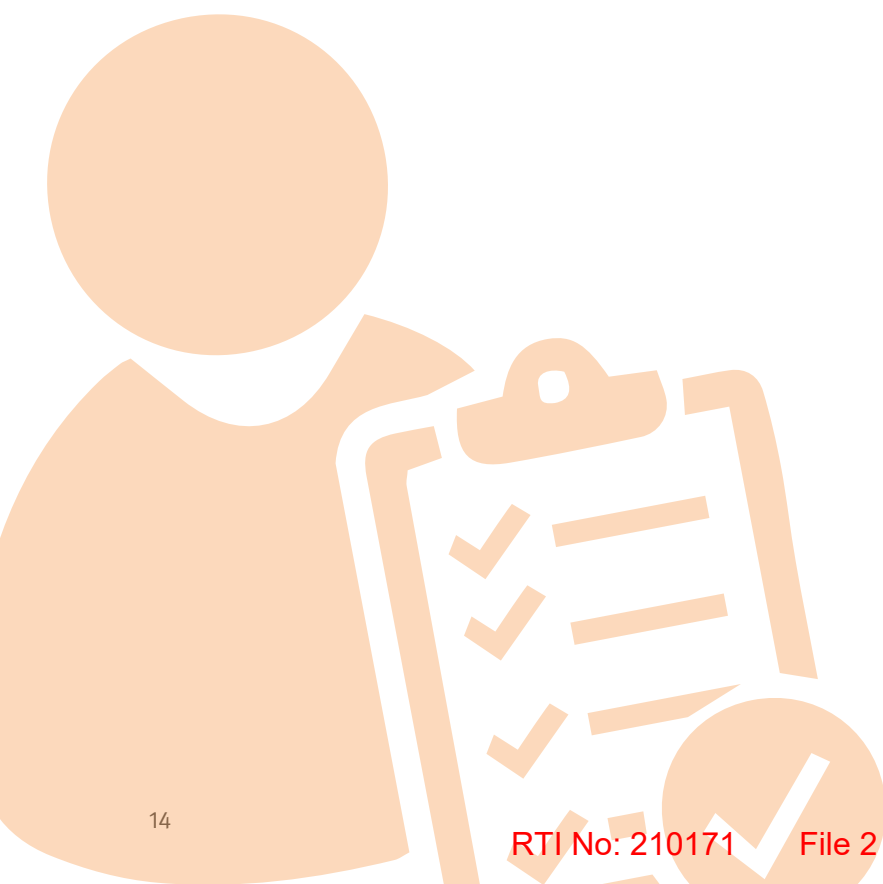
Accountability

The OFT is fully accountable for its actions and therefore aims to ensure consumers, traders, external agencies and stakeholders understand our objectives and standards and the factors taken into consideration when making its compliance and enforcement decisions.

DJAG's Ethical Standards unit, as well as several external agencies including the Queensland Ombudsman and the Crime and Corruption Commission, can investigate complaints about the actions and decisions of our staff. Information on compliance outcomes can also be provided to individuals seeking information under right to information laws.

The OFT commits to transparency in its delivery of its functions and will always cooperate fully with enquiries and requests made by valid external agencies.

The compliance, enforcement and educational functions undertaken by the OFT are in accordance with section 58(5) the *Human Rights Act 2019* which requires public entities to give proper consideration to human rights. The OFT will also determine if OFT's legislative obligations limit human rights under section 13 of the *Human Rights Act 2019*.



Related OFT policies

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

Where appropriate, we also incorporate relevant DJAG policies and procedures, national consumer affairs action plans, and best practice guides during the course of compliance and investigative duties. Where unforeseen circumstances or emergency situations arise, we will also follow current Government and departmental directives.



