

COMPLIANCE AND ENFORCEMENT POLICY

Introduction

The purpose of this policy is to set out the principles adopted by Northern Territory Consumer Affairs in making decisions about effective resource use to ensure compliance with the legislation administered.

Consumer Affairs supports:

- The Commissioner of Consumer Affairs
- The Commissioner of Tenancies
- The Commissioner of Business Tenancies
- The Commissioner of Residential Building Disputes; and
- The Controller of Prices

To fulfil the statutory obligations set out in the administered legislation including the Consumer Affairs and Fair Trading Act, the Residential Tenancies Act, the Business Tenancies (Fair Dealings) Act, the Caravan Parks Act, the Building Act, and the Price Exploitation Prevention Act.

The legislative framework for Consumer Affairs in the Northern Territory incorporates a number of Acts and Regulations governing a wide range of business and other activities affecting consumers. The relevant legislation can be viewed at www.consumeraffairs.nt.gov.au

The guiding principles underpinning this compliance and enforcement policy are that:

- any enforcement action is proportionate to the consumer detriment and the seriousness of the breach;
- matters will be assessed in a consistent manner in accordance with the policy;
- the process will be as transparent as possible so that business and consumers know what is expected of them and what they can expect from Consumer Affairs; and
- the matters selected for action will reflect any new and emerging issues and Consumer Affairs' priorities.

Priorities and Guidelines

The priority of Consumer Affairs is to maintain a high level of consumer protection without over regulating business activity. Consumer Affairs' policy is to educate traders and, in the first instance, issue oral or written warning to traders and landlords about contravening conduct.

Each situation will be assessed against Consumer Affairs enforcement and compliance priorities and guidelines ensuring we achieve our goal to promote and regulate responsible business conduct through administration of a regulatory system that protects consumer interests.

Consumer Affairs must manage its compliance and enforcement work within its allocated resources as no organisation has unlimited resources.

Consumer Affairs will focus on matters identified as being of major strategic significance and will seek to utilise its resources to achieve the highest level of compliance throughout the Northern Territory.

In assessing these priorities and focusing its resources, it undertakes a risk assessment of the areas acknowledged as most vulnerable within the Northern Territory.

The small population, limited volume of traders, remoteness of many Territorians and the large Indigenous population are all factors affecting the application of Consumer Affairs' resources. In recognising that Indigenous Territorians are among the most vulnerable consumers in Australia, Consumer Affairs utilises its strong networks throughout regional and remote Northern Territory to both educate Indigenous consumers and to monitor trader activity.

Consumer Affairs acknowledges that many risks to consumers can be minimised with education of both traders and consumers.

The media is an effective method to quickly and effectively reach consumers and media releases and warnings are effective compliance tools to alert consumers and traders of current issues and the prevalence of rogue operators. The Commissioner of Consumer Affairs is empowered under the Australian Consumer Law to publicly name a trader in order to protect the public. Consumer Affairs balances confidentiality requirements and the need to inform the public when in the public interest.

The following factors are taken into account when conducting compliance and enforcement activity:

- whether the matter falls within the jurisdiction of the Northern Territory;

- the level of consumer detriment with regard to the vulnerability of the effected consumer and or consumers and the manner in which they may have been targeted by the trader;
- the culpability of the alleged offender;
- any special circumstances surrounding the complaint;
- the likelihood of any action succeeding having regard to the sufficiency and quality of the evidence; and
- the trader's history both in the Northern Territory and interstate.

Compliance Strategies and Procedures

Consumer Affairs utilises the following strategies and procedures to ensure compliance:

Education

It is essential that consumers are aware of their rights and responsibilities under consumer protection legislation. Similarly, traders have an obligation to understand the statutory requirements when operating within the Northern Territory whether they are based in the NT, interstate, overseas or operating in an itinerant manner.

Consumer Affairs utilises its website, social media, publications, radio, print and television media as well as trader and consumer education visits to encourage compliance by traders and to inform consumers of their rights.

Monitoring

The Commissioner appoints Authorised Officers in accordance with legislation which provides these officers with a range of powers including: the ability to enter premises, copy and seize documents and require answers to questions or the provision of documents.

Much of the information received regarding non-compliant traders is obtained by the Consumer Affairs call center, however Compliance Officers also initiate audits of traders across the Territory, and educate traders about their rights and responsibilities.

Self-Regulation

Consumer Affairs' strong education focus seeks to ensure that traders and industry groups are aware of their responsibilities under the relevant legislation.

Through these educational activities and a cooperative working arrangement, many industry bodies assist in self-regulation of their members to ensure honesty and adherence to legislative requirements.

Information Sharing

Consumer Affairs shares information with other consumer protection agencies and other government and business bodies, consistent with the Consumer Affairs Privacy Policy and the privacy principles. This enables action where rogue traders are operating nationally or across state and territory borders.

Enforcement

Should Consumer Affairs consider that a trader or landlord is not appropriately complying with laws and a change in behaviour is not evident, enforcement action may be considered appropriate. Enforcement is the formal process of obtaining compliance with legislative requirements. The options available to Consumer Affairs include:

- Issuing a "Notice of requirement to furnish information" (section 8 notice) under the Consumer Affairs and Fair Trading Act
- Issuing a Substantiation Notice under the Australian Consumer Law
- Issuing a public warning
- Issuing an infringement notice
- Court enforceable undertakings
- Court orders
- Injunctions
- Intervening in or defending proceedings on behalf of a consumer or class of consumers in certain circumstances
- Instituting criminal or civil proceedings.

The level at which enforcement action will be undertaken will depend on a variety of issues with the highest level of action being at the sole discretion of the Commissioner.

Accountability

Consumer Affairs' enforcement action is subject to review by the courts and the Ombudsman.