



TRADING STANDARDS

Compliance Strategy

About this document

This document articulates Trading Standards' role as an operational unit within the Ministry of Business, Innovation and Employment (MBIE), and how we work to deliver on the high-level MBIE goal to “grow New Zealand for all”.

The document has been developed for, and defines, our core audience – those that we regulate – and our regulatory partners, which have a vested interest in our functions. It clearly articulates the regulatory tools we have available and our overall approach to compliance.

More specific detail on compliance is included for each of the six areas we regulate – Trade Measurement; Fuel Quality Monitoring; Consumer Product Safety; Auctioneers; Motor Vehicle Traders and Independent Qualified Pool Inspectors.

Who we are

Trading Standards is a leading regulator responsible for protecting New Zealand consumers by keeping our marketplace free from unsafe and non-compliant products and services. Our core audience is business, but we work alongside Consumer Protection, which is the consumer-facing team within Consumer Protection and Standards Branch of MBIE.

Our mission is to help grow New Zealand for all, by ensuring New Zealanders have safe products, accurate measurement and quality motor vehicle fuel. We also register Auctioneers, Motor Vehicles Traders and Independently Qualified Pool Inspectors.

What we do

Trading Standards has six areas of responsibility



Trade Measurement

250 Accredited organisations and individuals



Motor Vehicle Traders

3,400 Registered Motor Vehicle Traders



Consumer Product Safety

6 Mandatory product safety standards

7 Unsafe goods notices

120 Fair Trading Act recalls per year



Fuel Quality Monitoring

9 Fuel retail companies

1,200 Fuel service stations nationwide

115 Fuel service stations sampled per year



Auctioneers

200 Registered Auctioneers



Independently Qualified Pool Inspectors

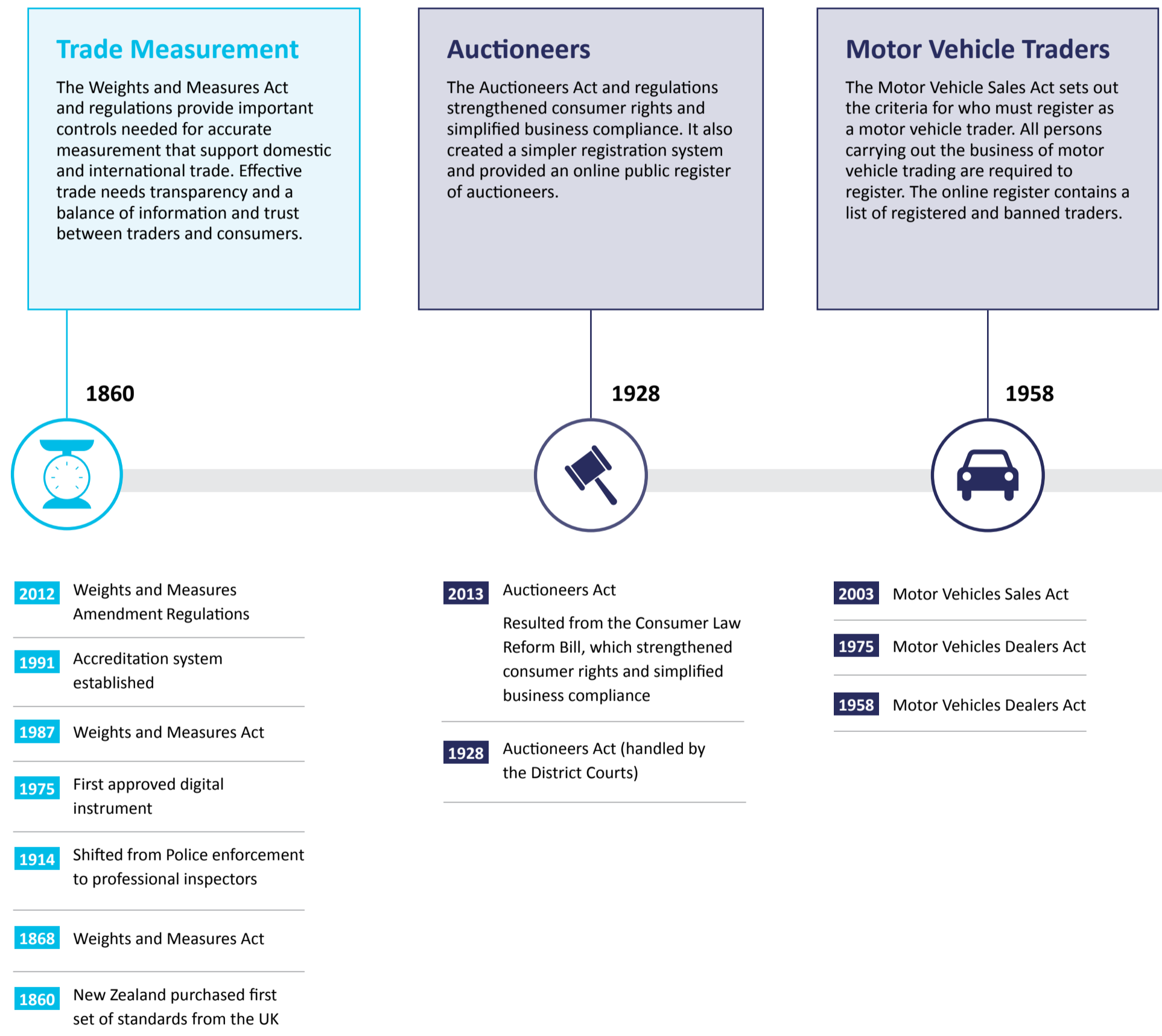
200,000 Number of pools

How what we do ties into what MBIE is trying to achieve



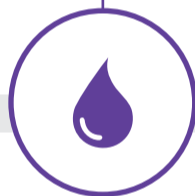
A brief historical timeline of our six regulatory areas of responsibility

This timeline highlights key legislative moments that strengthened consumer rights and facilitated trade.



Fuel Quality Monitoring

This programme monitors the quality of retail fuel in New Zealand and makes sure it complies and is suitable for our vehicles. The main focus of the programme is to sample and test the quality of fuels as sold to consumers. The programme is established under the Energy (Fuels, Levies and References) Act and Engine Fuel Specifications Regulations.



1986

Consumer Product Safety

The Fair Trading Act works as a safety net, establishing a general product safety obligation on suppliers of products in New Zealand. It enables the government to set safety standards, ban unsafe products and compel suppliers to recall unsafe products.



Independently Qualified Pool Inspectors

The Building Act requires pool owners to have their swimming pool barriers inspected once every three years. Owners can choose either their local territorial authority (local council) or an independent pool inspector to carry out the inspections.



2016

2017 Energy (Petroleum or Engine Fuel Monitoring Levy) Amendment Regulations

2011 Engine Fuel Specifications Regulations

1989 Energy (Fuels, Levies and References) Act

1988 Deregulation of distribution and sale of petrol and diesel

Pre-1986

Retail Fuel prices and margins had been regulated and fuel quality specs were set by agreement between government, the oil industry and motor vehicle manufacturers

2013 Fair Trading Act Amendment

1986 Fair Trading Act

Pre-1986

No general product safety law due to 1974 accident compensation scheme liability laws, with common law provisions pre-1974

2016 Building (pools) Amendment Act

All pools to be inspected and certified every three years

2004 Building Act

1987 Fencing and swimming pools Act

Trading Standards, as we are now known, has evolved over the years, changing names and government departments and picking up new functions. Our core role as a regulator has remained the same.

The regulator landscape



Consumer Product Safety

Trade Measurement

Fuel Quality Monitoring

Commerce Commission
Enforces product safety standard regulations and unsafe goods notices within the New Zealand market

Customs
Enforces product safety standard regulations and unsafe goods notices at the border

Energy Safety (Worksafe)
Regulates the safety and safe use of electrical and gas products

Environmental Protection Authority
Regulates, approves and enforces hazardous substances e.g. paints and explosives

Maritime NZ
Regulates safety equipment for use on water

Ministry for Primary Industries
Regulates food safety including manufacturing, packing and recalls

Ministry of Health
Regulates the safety of therapeutic products, medicines and medical devices as well as safety recalls

NZ Transport Agency
Regulates road safety standards e.g. child car seats, cycle helmets, road vehicles (including recalls)

Police
Regulates the safety and safe use of firearms

Worksafe
Regulates the safety and safe use of products in the workplace

Maritime NZ
Regulates that all shipping containers for export from New Zealand require a verified weight (Verified Gross Mass or VGM) before they can be loaded on a ship

Ministry of Health
Regulates the accuracy of medical equipment and devices

Ministry of Transport
Regulates the accuracy of taxi meters

MSL (Measurement Standards Laboratory)
Regulates and provides New Zealand's physical measurement standards in accordance with the International System (SI) of units

Police
Calibrates and maintains the accuracy of speed cameras and their own weighbridges

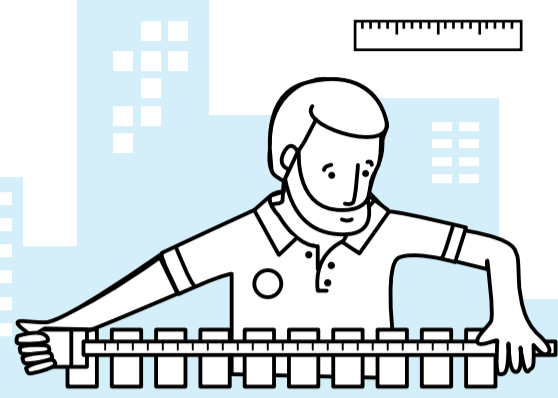
Energy Efficiency Conservation Authority
Vehicle fuel efficiency

Environmental Protection Authority
Hazardous substance approvals

MBIE
Energy & Resource Markets: fuel specification, fuel security

Ministry for the Environment
Alternative fuels, climate change

NZ Transport Agency
Safe operation of New Zealand's vehicle fleet and operation of vehicle fuel efficiency



Auctioneers

Motor Vehicle Traders

Independently Qualified Pool Inspectors

Commerce Commission

Have access to Auctioneer's records and can potentially prosecute relating to record keeping issues

Police

Have access to Auctioneer's records and can potentially prosecute relating to record keeping or fraud-related issues. They also undertake criminal history checks for individuals seeking registration

Customs

Regulates and tracks the importation of vehicles, shares information on potential traders with Trading Standards

Ministry of Justice

If a customer has a dispute about a vehicle they purchased from a registered trader they can have that issue heard at the Motor Vehicle Disputes Tribunal

NZ Transport Agency

Regulates and tracks the sale and ownership of vehicles, shares information on potential traders with Trading Standards

MBIE Building

The Regulators for the Building Act. Trading Standards rely on them for assistance on deciding whether applicants meet the requirements of the Act to become an IQPI

Territorial authorities (local councils)

Local councils offer the same services as an IQPI and utilise the reports completed by IQPIs. They hold the official records of swimming pools in their region. They are also obligated to share conduct-related issues about IQPI's with Trading Standards

Our core principles



We are... customer centric

We work with interested parties and our regulatory colleagues to identify issues and improve our services. Our responses are targeted and timely. We help people to find the right pathway within the regulatory landscape.

We work closely with others nationally and internationally to administer our regulatory regimes, locate gaps in coverage, develop our expertise, and provide a response to issues.



Targeted

We use our suite of regulatory tools in a proportionate way to promote compliance. Based on what is required, we use a mix of proactive and reactive strategies.

Our actions are tailored to the severity of risk or harm and take into account the characteristics of the regulated party. We recognise that most people wish to comply but also that we have a responsibility to use enforcement when necessary.



Fair and consistent

We treat people fairly and respectfully by maintaining high service standards, recognising cultural differences, and responding consistently where circumstances are similar.

We are professional when interacting with the public and our stakeholders. We always act in accordance with our powers and ensure the taxpayer is receiving value for money.



Contributors to excellence

We stay up to date and contribute to national and international standards development, working groups and fora. We lead and promote best practice in our work areas.

We focus on continuous improvement of our service delivery through use of Quality Systems and ISO Accreditation.



Transparent

We act transparently by promoting an understanding of our functions and enforcement activities. We communicate in plain language over the most effective channels.



Evidence led

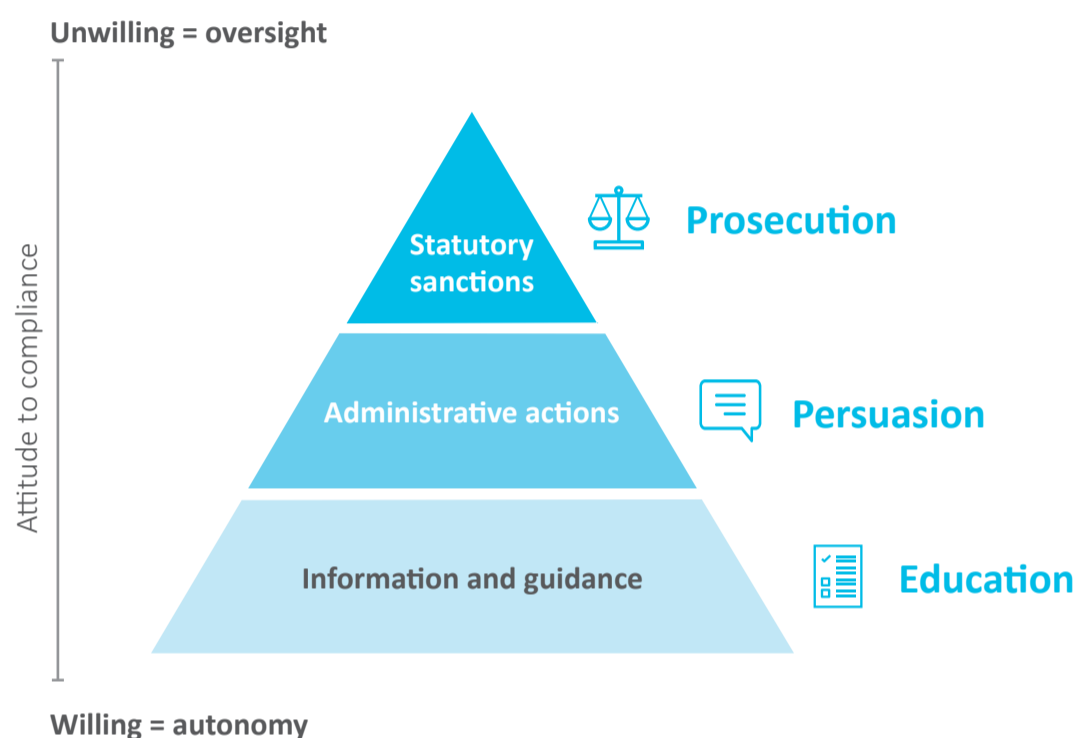
We continuously develop our expertise and ensure we are up to date on emerging issues. We collect evidence and use it to target interventions for our compliance activity.

We actively monitor, investigate and develop risk based responses to emerging national and international compliance issues.

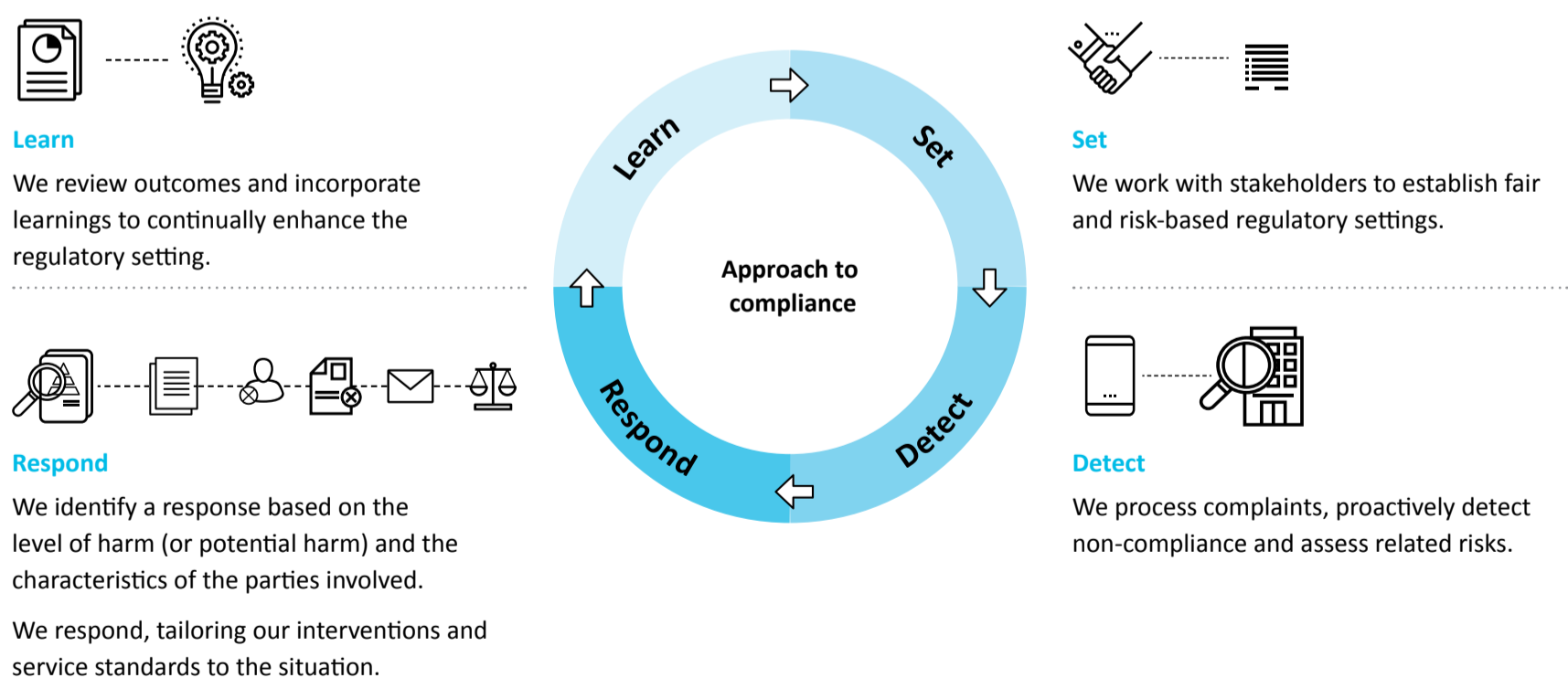
How we deal with compliance

Trading Standards preferred approach is to educate in the first instance. We also strive for consistency in approach so that businesses can have confidence in their interactions with us.

Our responses also take into consideration business behaviour and attitude – significant, deliberate non-compliance is a serious matter and will be treated accordingly.




Approach to compliance - risk and evidence based



Trading Standards compliance tools

The table below provides a summary of the different compliance tools that Trading Standards use. The pages that follow provide more detail about each of the six areas.

Regulatory tools	 Consumer Product Safety	 Trade Measurement	 Fuel Quality Monitoring	 Auctioneers	 Motor Vehicle Traders	 Independently Qualified Pool Inspectors
Education	✓	✓	✓	✓	✓	✓
Negotiated resolutions	✓		✓			
Policy statements	✓					
Set standards & requirements	✓	✓	✓	✓	✓	
Licensing / Registration / Accreditation		✓		✓	✓	✓
Complaints processes	✓	✓	✓	✓	✓	✓
Warning letter		✓	✓	✓	✓	✓
Infringement notices		✓				
Prosecution		✓	✓	✓	✓	



Consumer Product Safety

Trading Standards protects consumers by: monitoring local and international consumer product safety issues, engaging with industry, standards making bodies, injury prevention agencies and other regulators, overseeing product recalls and putting regulatory controls in place where necessary.

Legislative context

- Part 3 of the Fair Trading Act 1986
- Section 54 of the Customs and Excise Act 1996
- Consumer Guarantees Act 1993

Part 3 of the Fair Trading Act (FTA) enables the Minister of Commerce & Consumer Affairs to introduce the following enforceable regulatory controls:

- Product safety standards regulations (PSSR) - set minimum safety requirements to mitigate risks posed by goods that will or may cause harm (s29)
- Unsafe goods notices (UGN) - prohibit the supply of goods that will or may cause injury to any person (s31)
- Goods that don't comply with a PPS or UGN are prohibited imports under s54 of the Customs and Excise Act 1996

Other options available to the Minister of Commerce and Consumer Affairs:

- Product safety policy statements (PSPS) - provide guidance to facilitate food safety outcomes for certain goods to consumers, retailers, and manufacturers (s30A)
- Compulsory product recalls - mitigate risks from non-compliant or unsafe goods where suppliers fail to take satisfactory action (s32)

The Chief Executive of MBIE:

- Requires **mandatory reporting of voluntary recalls** (s31A)
- Can appoint **product safety officers** who have a range of powers (s33C)

Under section 33C of the Fair Trading Act 1986 a product safety officer may enter and inspect a place (not being a dwelling house) without a warrant if the product safety officer believes on reasonable grounds that:

- certain goods are unsafe (suspect goods); and the suspect goods are supplied at, or dispatched from, the place; and
- the entry and inspection is for the purpose of ascertaining, or taking steps to ascertain, whether the suspect goods are in fact unsafe.

A product safety officer may enter a dwelling house for the same purpose, but only with a warrant or the permission of the occupier.

The self-enforcing Consumer Guarantees Act 1993 requires that all consumer goods sold in New Zealand are 'safe'. How safety or otherwise is established by consumers is not prescribed and relies on reasonable assessment of the hazards. Where products fail the express guarantees, including safety, the consumer is entitled to a remedy (refund, repair or replacement).

Identification

- Breaches of the legislation are investigated by the Commerce Commission in-market and by the New Zealand Customs Service at the border. Breaches can be identified either reactively through a consumer complaint or proactively through compliance inspections.
 - Complaints about the safety of unregulated products can be made to Trading Standards. Each complaint is assessed to establish the level of risk and whether further investigation and or remedial action is required. Investigations draw on range of data sources to more fully understand the risk and what action may be required to mitigate the risks posed by an unsafe product.
 - Product safety officers undertake site visits to review or acquire products to evaluate the products safety.
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What actions, harms or risks do we address with this intervention?

A PSPS would be used to address one-off events and / or low level harms where the expectation is that the relevant sector or industry could take measures to 'self-correct' based on the guidance in the PSPS.

If industry accepts and adopts the guidance and it results in a satisfactory product safety outcome, this would remove the need for a formal regulatory intervention.

Do we prioritise the use of this intervention? If so, when and how?

This intervention will be used to address safety issues where no prior regulatory risk mitigation action has been taken. It would feature in cases where direct dialogue with most parties involved is possible and there is sufficient confidence that matters could be resolved without more formal regulatory action.

Under the FTA, the creation and review of a PSPS requires formal stakeholder consultation.

A UGN is appropriate in situations where there is a sufficiently serious risk to consumers and users, and this risk is best mitigated by means of a ban on the non-compliant product.

A UGN can (but does not need to) reference a published standard or use other defined criteria that determine whether a product is safe.

A UGN features where there is sufficient quantifiable risk to consumers and users.

Under the FTA a UGN can be implemented without the need for formal stakeholder consultation (though in practice this may feature).

In-market non-compliance with a UGN would be a matter for the Commerce Commission to investigate. Importation of non-compliant products is prohibited and would be a matter for Customs.

This measure is applied in cases where an identified risk or hazard relating to a consumer product can be effectively mitigated through the setting of mandatory requirements based on published standard(s).

Standards can be referenced in whole or in part and can be varied. There is a preference for using AS/NZS standards if available.

In-market non-compliance with a PSSR would be a matter for the Commerce Commission to investigate. Importation of non-compliant products is prohibited and would be a matter for Customs.

Under the FTA, the creation of a PSSR requires formal stakeholder consultation.

This tool would feature in a situation the recall of a product is warranted and the supplier(s) involved have refused to undertake a recall on a voluntary basis or adequately complete a recall. In most instances negotiations with suppliers are enough secure the necessary recall actions.

A CPR is a measure of 'last resort'. Under the FTA, a CPR does not require any formal stakeholder consultation. In practice it is highly likely that there would have been extensive dialogue with the supplier(s) concerned, seeking a voluntary recall as the preferred course of action.

Non-compliance with a CPR would be a matter for the Commerce Commission to investigate.

An SSN can be issued by an authorised product safety officer when they know that a consumer product has been implicated in serious injury or death, or when the officer has good reason to suspect that the product may be unsafe and believes on reasonable grounds that the supply of the goods may lead to a person suffering serious harm. Issuing a SSN is necessary to prevent the supply of the goods pending further investigation into their safety. An SSN is a temporary cessation of supply that initially lasts for 3 days, renewable for 2 further periods, making a maximum of 9 consecutive working days in total.

This measure provides a quick response mechanism to remove an unsafe or suspected unsafe product from the supply chain. It provides time for further investigation or a permanent intervention to be put in place to address the risk of serious injury or death.

Non-compliance with an SSN would be a matter for the Commerce Commission to investigate.



Trade Measurement

Trading Standards is responsible for the administration and enforcement of the Trade Measurement System that is provided for in the Weights and Measures Act 1987 and supporting Regulations. The intent of the Act is to establish a legal metrology infrastructure that helps to ensure goods traded by quantity are exchanged on the basis of recognised, informed and accurate weight and measure.





In support of the above objective the legislation provides for an Accreditation Scheme for 'Accredited Persons' (APs) to certify and verify weighing and measuring equipment used for trade purposes.

Legislative context

Trading Standards enforces the Weights and Measures Act 1987 and Weights and Measures Regulations 1999. Powers of Inspection and Inspectors' warrants are provided for in Part 5 (Administration – Appointment and powers of Inspections) of the Act.

Identification

- Breaches of the legislation can be identified either reactively through a consumer complaint or proactively through compliance inspections.
 - If a consumer has a complaint about a product sold by quantity or a non-compliant weighing or measuring instrument, it can be made directly to Trading Standards. Complaints from consumers are examined on a case by case basis, with those that are justified being actioned and investigated.
 - Officers undertake site visits to inspect products and examine and test weighing or measuring instruments to determine compliance.
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Regulatory Tool	Who are we targeting and what characteristics of the regulated party justify the use of this tool?	What actions, harms or risks do we address with this intervention?	Do we prioritise the use of this intervention? If so, when and how?
Less serious Preferred first response: education or advice	Non-compliant traders. On initial discovery of a breach against the relevant legislation.	A warning letter is appropriate for non-compliance where there is no intent to defraud or no significant consumer harm.	This intervention will be used in the majority of cases when non-compliance is discovered and no prior action has been taken.
 Warning letter	Non-compliant traders. Deliberate non-compliance; repeat offenders.	Where a warning letter has not corrected the non-compliant practice, or the non-compliance is severe enough in the first instance to justify issuing an infringement notice.	Issuing an infringement notice is used as a tool to change trader practice and avoid overburdening the prosecution system. Infringement notices are expected to be the most used sanction (aside from warning letters).
 Infringement notice	Non-compliant Accredited Persons (APs). Evidence of continued failure of an AP to perform their duties to an acceptable standard, or a person has been convicted of carrying out the duties of an AP when not authorised.	Where an AP has been found to be operating outside their conditions of approval or failing to perform their duties or functions to a satisfactory standard. In cases where corrective action requests have been inadequately addressed or would not be appropriate.	This tool is a strong deterrent for APs who rely on being accredited to operate.
 Suspension of an Accredited Person	Non-compliant APs. Evidence that suspension has not corrected the non-compliant practice. The AP has no evidence that they have maintained their competence in a specific category.	Where suspension has not been a sufficient tool to remedy the poor performance, or the AP or their actions are significant enough to warrant their accreditation being amended or revoked.	This tool is a strong deterrent for APs who rely on being accredited to operate and also to ensure APs maintain their competence in all categories they are accredited for.
 Accreditation revoked or amended	Non-compliant traders. Deliberate non-compliance; repeat offenders.	Where initial attempts to correct the non-compliant practice have failed and/or consumers or businesses are significantly harmed (or there is a high risk of significant harm).	Prosecution is the ultimate sanction. The case for prosecution needs to be strong. Cases for prosecution will be carefully considered by branch management, in line with MBIE's prosecution policy.
More serious			



Fuel Quality Monitoring

The Fuel Quality Monitoring Programme monitors the quality of retail fuel (petrol, diesel and bio-fuel) in New Zealand and makes sure it complies with specifications set out in the Engine Fuel Specifications Regulations.

These regulations govern the properties of petrol and diesel to protect the public, vehicles and the environment.



Legislative context

Trading Standards enforces the Engine Fuel Specifications Regulations 2011 (EFSR). Powers are determined by the Energy Act 1989, warrants and rights according to section 35C (2).

Identification

If a consumer has a complaint about fuel quality this can be made directly to Trading Standards who can request that the company investigate the issue. Trading Standards can also undertake site visits and take samples of fuel for analysis.

Annual National Sampling Programme - samples are collected based on a statistical model of random selection according to the market share of a brand in the region. The sampling programme is used to detect non-compliance. Around 30-40 samples are tested by an accredited test facility each month.

Regulatory Tool		Who are we targeting and what characteristics of the regulated party justify the use of this tool?	What actions, harms or risks do we address with this intervention?	Do we prioritise the use of this intervention? If so, when and how?
Less serious ↑ ↓ More serious	Preferred first response: education or advice  Warning letter	Non-compliant fuel retail companies, fuel suppliers and importers.	One-off fuel non-compliance issues; failure to supply requested information. Low-level harm to vehicle as a result of complaint investigation, etc.	This intervention will be used in the majority of cases of non-compliance, where no prior action has been taken against particular businesses.
	 Prosecution	Deliberate or repeat non-compliance with fuel quality specifications; failure or avoidance of supplying requested information; making an incorrect or misleading statement; or obstructs an officer carrying out their duties.	Where a warning letter has not deterred non-compliance, or the non-compliance is sufficiently severe. Systemic non-compliance overlapping with other regulatory regimes, or a business model with elements of conscious non-compliance.	Prosecution is the ultimate sanction. The case for prosecution needs to be strong. Cases for prosecution will be carefully considered by branch management, in line with MBIE's prosecution policy.

Auctioneers



To carry out business as an auctioneer a person must be registered, or be an employee of a registered auctioneer, and not be disqualified under the qualification criteria set out in the Auctioneers Act.

- It is a legal requirement to maintain a public searchable register of all Auctioneers.
- Consumers can search to see who is able to carry out auctions on their behalf. They will also have confidence that auctioneers will abide by the record-keeping obligations which protect the vendor and the owner of the property being auctioned, and provide a details of the auction (eg. amount paid, and the amount and date on which the proceeds were paid to the vendor).




Legislative context

The Auctioneers Act 2013 empowers the Registrar to accept or refuse an application for registration, and also to remove those persons disqualified from registration.

Identification

Complaints from consumers and practitioners are examined on a case by case basis by Trading Standards, with those that are justified being actioned by the Registrar.

Issues in regards to the conduct of an auctioneer can be referred to the Commerce Commission in certain situations.

Regulatory Tool	Who are we targeting and what characteristics of the regulated party justify the use of this tool?	What actions, harms or risks do we address with this intervention?	Do we prioritise the use of this intervention? If so, when and how?
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Less serious</p> <p>Preferred first response: education or advice</p> <p> Warning letter</p>	<p>Non-compliant traders.</p> <p>On initial discovery of a breach against the relevant legislation.</p>	<p>A warning letter is appropriate for non-compliance where there is no intent to defraud or no significant consumer harm.</p>	<p>This intervention will be used in the majority of cases when non-compliance is discovered and no prior action has been taken.</p>
<p> Cancel Registration</p>	<p>Registered traders, if the legislated disqualification or cancellation criteria are met.</p>	<p>Prohibits auction activity by persons or businesses that have provided false information.</p>	<p>This tool is a strong deterrent for auctioneers who rely on being registered to operate.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">More serious</p> <p> Prosecution</p>	<p>Non-compliant traders where there is deliberate non-compliance or where repeat offences are identified.</p>	<p>Where initial attempts to correct the detected non-compliance have been unsuccessful.</p>	<p>Prosecution is the ultimate sanction. The case for prosecution needs to be strong.</p> <p>Cases for prosecution will be carefully considered by branch management, in line with MBIE's prosecution policy.</p>



Motor Vehicle Traders

To carry out business as a motor vehicle dealer, a person must be registered, or be an employee of a registered trader, and not be disqualified under the qualification criteria under the Motor Vehicle Sales Act 2003.


- It is a legal requirement to maintain a public searchable register of all motor vehicle traders.
- Consumers can have confidence in the information provided by registered motor vehicle traders, including vehicle details provided on the mandatory consumer information notice, and contact details of traders.

Legislative context

The Motor Vehicle Sales Act 2003 empowers the Registrar to accept or refuse an application for registration, and also to remove those persons disqualified from registration. Enforcement action is also taken where traders are found to be in business but not registered under the Act. Data is exchanged with both NZTA and NZ Customs on an ongoing monthly basis under agreements with the Privacy Commissioners Office to establish who may need to be registered.

Identification

- Complaints from consumers, including those about odometer tampering are examined on a case by case basis by Trading Standards, with those that are justified being actioned by the Registrar.
 - Data matching is done with information supplied by NZTA and NZ Customs on an ongoing basis.
 - Investigations are carried out and prosecutions taken against those who do not comply with the requirements under the Act.
 - The vast majority of actions are taken as a result of proactive enforcement activity by the Registrar.
 - Consumers also have the right of redress by taking a dispute through the Motor Vehicle Dispute Tribunal process which is administered by the Ministry of Justice.
 - Issues in regards to the conduct of a motor vehicle trader can be referred to the Commerce Commission in certain situations.
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Regulatory Tool	Who are we targeting and what characteristics of the regulated party justify the use of this tool?	What actions, harms or risks do we address with this intervention?	Do we prioritise the use of this intervention? If so, when and how?
Preferred first response: education or advice			
<div style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> Warning letter </div> </div>	<p>Traders; non-deliberate non-compliance.</p>	<p>A warning letter is appropriate for non-compliance where there is no intent to defraud or no significant consumer harm.</p>	<p>This intervention will be used in the majority of cases when non-compliance is discovered and no prior action has been taken.</p>
<div style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> Infringement notice </div> </div>	<p>Non-compliant traders. Deliberate non-compliance; repeat offenders.</p>	<p>Where a warning letter has not corrected the non-compliance, or the non-compliance is severe enough in the first instance to justify issuing an infringement notice.</p>	<p>Issuing an infringement notice is used as a tool to change trade practice and avoid overburdening the prosecution system.</p>
<div style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> Cancellation of Registration </div> </div>	<p>Registered traders who have made false or fraudulent representations, or who are disqualified from registration etc. as defined under the Act.</p>	<p>Where a warning letter has not deterred non-compliance, or the non-compliance is sufficiently severe in the first instance to justify cancelling a registration.</p>	<p>This tool is a strong deterrent for traders who rely on being registered to operate.</p>
<div style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> Banned from participation as a motor trader </div> </div>	<p>A person who has had two or more convictions etc. as specified under the Act within a 10 year period.</p>	<p>Where business practices have proven to be to the detriment of the consumer, or the person is unfit to operate as a motor vehicle trader.</p>	<p>This tool is a strong deterrent for repeated poor practice.</p>
<div style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> Prosecution </div> </div>	<p>Non-compliant traders where deliberate non-compliance, or where repeat offences are identified.</p>	<p>Where initial attempts to correct the detected non-compliance have been unsuccessful and/or consumers or businesses have been significantly harmed (or there is a high risk of significant harm).</p>	<p>Prosecution is the ultimate sanction. The case for prosecution needs to be strong. Cases for prosecution will be carefully considered by branch management, in line with MBIE's prosecution policy.</p>

Less serious

More serious

Independent Qualified Pool Inspectors



To carry out business as an independently qualified pool inspector (IQPI), a person must be accepted by MBIE to carry out inspections to determine if pools have compliant barriers.

- It is a legal requirement's that pool owners and operators have their pool barriers certified as compliant every 3 years and that territorial authorities manage required certificates of periodic inspection.
- It is a legal requirement for a person operating outside of a territorial authority, to be an IQPI to issue certificates of periodic inspection under the Building Act for pool barriers.
- MBIE is responsible for the acceptance of individuals as independently qualified pool inspectors, having been satisfied that the individual is appropriately qualified.
- Pool owners and operators have choice in who provides pool barrier compliance inspection services, and confidence when engaging such services outside of a territorial authority that the individuals are competent to provide such services.

Legislative context



The Building Act was amended by the Building (Pools) Amendment Act 2016 to help prevent drowning of, and injury to, young children by restricting unsupervised access to residential pools by children under 5 years of age.

The Amendment Act introduced new provisions to help ensure that barriers preventing access to pools comply with the Building Act through a 3 yearly certification process. The Amendment Act also introduced provisions enabling individuals, outside of building consent authorities and territorial authorities, to provide pool barrier compliance inspection services and issue required certificates of periodic inspection.

IQPIs cannot be prosecuted under the Building Act. Breaches of other legislation by IQPIs (such as the Crimes Act or the Fair Trading Act) can be dealt with by other agencies, including the Police.

Identification

- MBIE administers the regime for acceptance of individuals as IQPIs and ensures that they are appropriately qualified to determine if pool barriers are compliant.
 - Territorial authorities are responsible for monitoring compliance with the pool barrier requirements in the Building Act and for the periodic inspection and certification requirements.
 - Territorial authorities can only accept certificates of periodic inspection from individuals who are registered as an IQPI.
 - Territorial authorities are responsible for notifying MBIE when they decline to accept a certificate of periodic inspection from an IQPI.
 - IQPIs must notify the relevant territorial authority where they find a pool with non-compliant barriers, and copy this information to MBIE.
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Regulatory Tool		Who are we targeting and what characteristics of the regulated party justify the use of this tool?	What actions, harms or risks do we address with this intervention?	Do we prioritise the use of this intervention? If so, when and how?
Less serious ↑ ↓ More serious	Preferred first response: education or advice  Warning letter	Non-compliant or poor conduct by an IQPI. On initial discovery of a breach against the relevant legislation.	A warning letter may be appropriate for the first instance of non-compliance or poor conduct.	This intervention will be used in the majority of cases when non-compliance is discovered and no prior action has been taken.
	 Cancellation of Registration	IQPIs, if MBEs published disqualification or cancellation criteria is met.	Prohibits IQPIs activity by persons or businesses that have provided false information etc.	This tool is a strong deterrent for IQPI who rely on being registered to operate.

