

Property smart

A pocket guide to buying and selling
real estate in Queensland



**SMART
GUIDES**

Office of Fair Trading
www.qld.gov.au/fairtrading



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Disclaimer

This publication aims to provide consumers with a general understanding of their rights and responsibilities in the Queensland marketplace. It is not a comprehensive statement of the law.

The laws referred to in this guide are complex and various qualifications may apply to the provisions in different circumstances. You are encouraged to obtain independent legal or financial counselling advice if you are unsure of how these laws apply to your situation.

Legal advice

The Office of Fair Trading can not give you legal advice.

We strongly recommend you seek independent legal advice before signing any contract. Ensure your solicitor is independent of any other party to the transaction.

When choosing a solicitor, shop around and compare different solicitors' experience, service and costs. Before you appoint your solicitor, ask for a detailed written quote for the work you want done.

Solicitors must carry professional indemnity insurance, which protects you if something goes wrong because of action the solicitor takes or does not take.

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Buying a home

Before you look

Prepare a budget

Preparing a budget is a good way to understand your financial situation. It can help you to see problems as they appear and fix them before they get out of control.

To start:

- › record everything you spend for around three months
- › take note of how often you buy individual items
- › always set aside enough money to cover unexpected costs.

Visit www.qld.gov.au/fairtrading to download our budget planner. You can use it to:

- › track what you earn and spend
- › list your savings goals
- › estimate your future savings.

Save a deposit

If you're thinking about buying a home, start saving now. The deposit is the biggest initial cost you'll need to pay—usually at least 5% of the full price. A savings plan is great practice for paying off a mortgage. Lenders may be more willing to lend you money if you have a strong savings history.

Lenders might be:

- › banks
- › building societies
- › credit unions.

Make sure you understand all the conditions, fees and charges connected to your account.

Research the market

A good first step is to look at property listings. You can find these:

- › in real estate agency windows
- › on the internet
- › in newspapers' property sections.

You can get a clear idea about property prices in the relevant area by:

- › using SmartMaps to find out what properties have sold in the area, and for how much (you must pay a fee for this service)
- › searching the internet for property sales reports
- › attending open inspections in the area
- › talking to friends or family who have recently bought a home in the area
- › talking to a licensed real estate agent.

Visit **www.qld.gov.au/housing** to access SmartMaps.

'IF YOU'RE THINKING ABOUT BUYING A HOME, START SAVING NOW.'

You can also look at things like:

- › information on upcoming developments in your area from the Department of Infrastructure, Local Government and Planning
- › Reserve Bank of Australia (RBA) statements about official interest rates
- › media reports about trends in house prices, supply and demand
- › property agents' reports about these trends.

Visit **www.dilgp.qld.gov.au** for the Department of State Development, Infrastructure and Planning.

Visit **www.rba.gov.au** to access and read RBA statements.

If you're buying your first home, you may be eligible for the Queensland First Home Owners' Grant. Visit **firsthomeowners.initiatives.qld.gov.au** to find out more.

Know the full costs

When you buy your home, you have to pay more costs than just the asking price. Here are some costs you can usually expect to pay in addition to the purchase price.

Before you buy:

- › Transfer duty (previously known as stamp duty)
- › Professional valuation
- › Property inspections
- › Real estate agent fees
- › Legal fees
- › Conveyancing costs
- › Search fees, such as a Title search

When you buy:

- › Bank or mortgage fees and insurance
- › Home and contents insurance
- › Moving costs and utility connections
- › Smoke alarms and electrical safety switches

After you buy:

- › Council rates
- › Water consumption and service fees
- › Body corporate fees (where applicable)
- › Ongoing maintenance costs
- › Utility costs

Appoint a real estate agent

When you are looking to buy a property, you may want to hire a real estate agent to:

- › find suitable properties for you
- › negotiate with the seller for you
- › do background checks on the property and area
- › bid for you at an auction.

Real estate agents must have a licence to work in Queensland. You have the right to see their licence document (they must show you at your request).

You can also check their licence online. Visit **www.qld.gov.au/fairtrading** to check the free licensing register. You can look an agent up by name or licence number.

To hire an agent, you must fill in an appointment form. Visit **www.qld.gov.au/fairtrading** to download the form.

This form will set out:

- › what services the agent will do
- › any limits or conditions on these services
- › all commissions, fees and expenses for the services.

Get finance

Choose a home loan

A home loan is a debt you live with for many years. Make sure you do careful research before talking to any financial institution. This will help you to understand the loan options and choose the best one for you. Talk with a wide range of lenders so you can compare their responses.

You should look at a lender's comparison rates. Comparison rates will combine the interest payments with other fees and charges.

Questions

You may need to ask a lot of questions before you properly understand any home loan offered to you.

Visit **www.qld.gov.au/fairtrading** for a list of questions to ask your financial institution or mortgage broker.

Home loan facilities

Some lenders offer to tailor their loans to your needs. Your lender may charge extra for some features, so think carefully about what you need and how it will benefit you.

Visit **www.qld.gov.au/fairtrading** to learn more about:

- › offset facilities
- › redraw facilities
- › mortgage protection insurance.

‘MAKE SURE YOU DO CAREFUL RESEARCH BEFORE TALKING TO ANY FINANCIAL INSTITUTION.’

Alternative home loan options

If you are having difficulty getting a standard home loan, you may need to consider other options. These loans can help you break into the property market in the short term, but they do come with serious risks.

Some alternative home loan options include:

- › non-conforming loans
- › low document loans
- › low-deposit or no-deposit loans
- › long-term mortgages
- › vendor finance
- › a reverse mortgage.

These loans often:

- › have higher interest rates
- › have more fees or charges
- › force you to take out additional loan insurance
- › leave you worse off over the full term of the loan.

Think very carefully before signing up to any of these loans.

Visit www.qld.gov.au/fairtrading to learn more about these types of loans.

Find a home

Know the property's true value

Understanding the true value of a property can save you from paying too much. For a fee, the SmartMaps service can give you some general advice about property values in the area.

This includes:

- › what properties have sold in the area
- › how much they sold for
- › when they were bought and sold
- › what size and dimensions the properties are.

This service has details for most houses, units and townhouses in Queensland. Visit **www.qld.gov.au/housing** to access SmartMaps.

You should also consider hiring a property valuer. Find an independent valuer, and not one connected to the seller or their agent (a 'referred valuer'). If you do choose to use a referred valuer, make sure you are aware of the relationship between the valuer and the seller.

Make sure you use a valuer registered with the Valuers Registration Board. Check the Valuers Registration Board website at **www.vrbqld.com.au** or the Australian Property Institute website at **www.api.org.au**

Visit **www.qld.gov.au/fairtrading** for a list of instructions to give your valuer and a list of what information to expect in a valuation report.

There is no set fee for property valuation. You should negotiate with your valuer before they start work.

Buy at auction

You need to prepare before buying at auction. Try to go to a few auctions first to see how they work.

The terms of sale usually forbid you from a conditional purchase, such as:

- › subject to finance
- › subject to the completion of another sale.

If you are the successful bidder at the auction, you will have to settle the contract even if:

- › the house doesn't pass inspections
- › you change your mind
- › you can't afford it.

Before auction day, you should:

- › visit the property
- › get the relevant inspections
- › obtain a valuation

There is **no cooling-off period** for buying at auction. The cooling-off period also does not apply if you enter a contract:

- › within two days of an unsuccessful auction of that property
- › after being a registered bidder at the auction.

Visit **www.qld.gov.au/fairtrading** to learn more about what you need to do before the auction and on auction day.

Buy off the plan

You can choose to buy a property 'off the plan'. This means that you enter into a contract before:

- the building is out of the construction phase
- the title to the lot has been created.

Visit **www.qld.gov.au/fairtrading** to learn more about the risks and benefits.

Buy privately (no agents)

Be careful about buying a home privately, rather than working through the seller's real estate agent. Always get a solicitor to check the contract before you sign it.

Don't sign a contract if you're not comfortable with the sale.

In particular, only sign if the seller:

- includes the required warning statement in the contract (it must be directly above the space for you to sign)
- gives you the five-day cooling-off period.

Don't pay too much. Make sure you:

- get an independent valuation of the property
- find the asking price of similar properties by
 - reading property listings online or in the newspaper
 - visiting open houses
- get inspections done on the property (building, swimming pool and pest inspections).

‘DON’T SIGN A CONTRACT IF YOU’RE NOT
COMFORTABLE WITH THE SALE.’

Make an offer

Contract of sale

When you find a property you like, you can make an offer to buy it. Sign the contract of sale to formalise your offer.

The contract sets out:

- › the price you are offering for the property
- › any terms and conditions (such as ‘subject to finance’ or ‘subject to inspections’)
- › details of when you will pay your deposit
- › the time and date of settlement.

The contract only becomes binding when you and the seller have both signed it. Before you sign, take a copy of the contract away and discuss it with your solicitor. Don’t be pressured into signing a contract without getting legal advice first.

A contract of sale must have a warning statement in it. This statement must appear directly above the space where you sign the contract. It advises you to get an independent property valuation and independent legal advice.

You can read the text of the statement at
www.qld.gov.au/fairtrading

While it is illegal for a contract not to have a warning statement, this alone won't give you grounds to back out of the contract. However, the seller (or their agent) may face serious penalties.

Pay the deposit

If the seller accepts your offer, they will sign the contract. Once this happens, you will need to pay the deposit. Your contract will set out the amount of the deposit and when it will be due—normally, you'll need to pay in two to three days.

You might be asked to pay a partial deposit when you make the offer. This does not guarantee the property will be yours. The seller can still choose to reject your offer. If they do, you will get your deposit back.

Cooling-off period

A five-day cooling-off period applies to contracts for residential property. You are free to change your mind during this time. This does not apply if you buy at auction.

Auctions have no cooling-off period. This includes contracts that you enter into:

- › within two days of an unsuccessful auction of that property
- › if you had been a registered bidder at the auction.

The first day of the cooling-off period is the day you get a copy of the signed contract (signed by both parties). It will last until 5 pm on the fifth day.

Please note:

- › If you get the contract on a weekend or a public holiday, the cooling-off period starts on the next business day.
- › The cooling-off period still begins if a representative takes the contract on your behalf.
- › If there's a dispute over when you got the contract, the seller will need to prove they got it to you.
- › The cooling-off period only applies to the first option contract that you sign with a seller (but no subsequent contracts).

To cancel during the cooling-off period, you must:

- › write and sign a document that says you are cancelling the contract
- › deliver it to the seller (or their agent) before the end of the cooling-off period.

You are responsible for making sure the seller gets the written notice in time. You can deliver it in person, by email or fax. The seller must refund the deposit within 14 days. They may deduct a penalty of up to 0.25% of the purchase price.

‘ASK YOUR SOLICITOR IF ALL OTHER CONDITIONS OF THE CONTRACT HAVE BEEN MET.’

Property inspections

Arrange for property inspections at the start of negotiations. This way, you'll know what condition the property is in. This can help you factor in any future costs and make an informed offer.

The main types of property inspections are:

- › building inspections
- › pest inspections
- › swimming pool inspections.

If you can't arrange inspections early, you can still have inspections done before settlement day. You will need to write terms into the contract to let you cancel the sale if the property gets poor inspection reports.

Do another inspection a few days before settlement. Make sure it's in the same condition as when you signed the contract. Check any specific requirements you put into the contract.

Ask your solicitor if all other conditions of the contract have been met.

Complete the sale

Home and contents insurance

Make sure you find out when you become responsible for insuring your new home. Talk to your agent or solicitor.

In most cases, you will become responsible for insuring the property from 5 pm the next business day after the date the contract is signed by both you and the seller—**this is before settlement day.**

You must decide for yourself whether to take out home insurance. However, **not having home insurance is very risky.** Home insurance will cover you for loss or damages to the building and its fixtures. You should also consider taking out contents insurance.

If you have a mortgage, your lender can insist that you take out home insurance.

If you buy into a community titles scheme, you still need to insure your own property and contents. The body corporate will usually have to take out insurance for any common property.

Settlement day

On settlement day, you will usually:

- › pay the remaining amount of the purchase price to the seller
- › receive the title of the property (note that this is no longer a physical document)
- › get the keys
- › take possession of the property.

Settlement can be a complex transaction. Ask your legal and financial representatives to deal with the seller or their representatives. If you make the final payment to a real estate agent or a solicitor (yours or the seller's), they will need to place it in a trust account. Make sure you get a *trust account receipt*.

Settlement day is usually 4–6 weeks after the contract is finalised, but you and the seller can negotiate any timeframe. Almost all settlements are completed within a range of 30–90 days after the contract is finalised.

The seller must leave the property vacant and clean. Make sure you conduct a pre-settlement inspection no more than a few days before settlement day. If it isn't in good condition, you can ask your lawyer to delay settlement until the seller fixes the problem.

The seller pays the usual costs (like council rates) up until settlement day. You start paying the next day.

Register your land

After the sale, you should check the details lodged with the titles registry are correct. Contact the titles registry office or your solicitor to get a *confirmation statement*. This statement will confirm that you're now the registered owner of the property.

You can search the titles registry to make sure your details are correct. This includes:

- financial interests (such as your mortgage)
- any easements or other access needs.

Visit **www.business.qld.gov.au** to search the register or order a statement.

Repay your mortgage

Visit www.qld.gov.au/fairtrading for some practical tips on:

- › minimising the overall cost of your loan
- › refinancing your loan
- › getting help.

Checklist

To buy a home, you need to:

- ✓ prepare a budget
- ✓ save a deposit
- ✓ research the market
- ✓ understand the costs
- ✓ appoint a solicitor
- ✓ appoint a real estate agent
- ✓ get finance
- ✓ find a home
- ✓ make an offer
- ✓ buy the home
- ✓ repay your mortgage.



Selling a home

Appoint a real estate agent

When you sell your property, you may want to use a real estate agent. An agent can:

- › advise you on the price for your home
- › find buyers
- › negotiate the sale.

Finding an agent

Speak with several agents before you choose one. Ask them to inspect your property and provide you with a listing presentation. They will:

- › explain the state of the property market
- › give you a plan to market and sell your home.

Real estate agents must have a licence to work in Queensland. You have the right to see their licence document (they must show you at your request).

You can also check their licence online. Visit **www.qld.gov.au/fairtrading** to check the free licensing register. You can look an agent up by name or licence number.

Commissions and costs

Before appointing an agent, you should ask about their commission. Agents can charge any amount of commission, so make sure you shop around with different agents to compare their prices. Don't be afraid to negotiate with an agent to try and get a better price.

Appointment

Once you decide on a real estate agent, you must fill in an appointment form. This will set out:

- › how much the agent will charge as a commission
- › what other costs they may incur on your behalf (such as advertising)
- › what services the agent will provide, and how they will provide them.

They cannot represent you unless you sign the form. Make sure you read it thoroughly to make sure you're happy with the arrangement.

Visit www.qld.gov.au/fairtrading to download the form or find out more about appointments and commissions.

Ask your agent to give you regular activity reports (in writing) about:

- › potential buyers' inspections and feedback
- › general market updates.

‘MAKE SURE YOU GET INDEPENDENT LEGAL
ADVICE BEFORE YOU SELL YOUR HOME.’

Appoint a solicitor

Make sure you get independent legal advice before you sell your home. Solicitors must have *professional indemnity insurance*—this protects you in case they do something wrong. This might be an action that they take, or one that they do not take.

When choosing a solicitor:

- › shop around for experience, services and costs
- › find a firm that specialises in **property or conveyancing**
- › make sure your solicitor isn't connected to any other party (like the buyer).

Before you appoint a solicitor, ask for a detailed quote for the work you want done. Some solicitors may charge a set price.

Ask your solicitor to:

- › draft the contract to make sure the terms are appropriate and reasonable
- › help you complete the disclosure documents
- › check the contract of sale before you sign it.

They will deal with the buyer (or their solicitor) to:

- › fix any problems that came up in pre-settlement inspections
- › handle receipt of your final payment on settlement day
- › transfer the property title from you to the buyer.

Visit the Queensland Law Society at www.qls.com.au to find a solicitor in your area.

Selling privately

Be careful about selling your home privately, rather than working with a real estate agent. Always get a solicitor to check the contract before you sign it. Don't sign the contract if you're not comfortable with the sale.

By law, you must give the buyer a five-day cooling-off period and include a warning statement in the contract (see page 32 for details).

It's sometimes hard to know what a realistic price might be. You can get an idea by:

- › hiring an independent valuer
- › reading property listings in the newspaper or online
- › visiting open houses for similar properties
- › using SmartMaps to find out what properties have sold in the area, and for how much (you must pay a fee for this service).

Visit www.qld.gov.au/housing to access SmartMaps.

You might need to do repairs on your home. You can get building, pest and swimming pool inspections done to identify any problems. Your buyer can choose to arrange their own inspections.

‘MAKE SURE YOU UNDERSTAND ALL THE PROS AND CONS BEFORE DECIDING ON A METHOD OF SALE.’

Methods of sale

There are several common ways to buy and sell real estate. Your agent will recommend a type of sale for your home.

They will base this on:

- › what type of home it is (such as house, apartment or townhouse)
- › where it's located
- › how the property market is behaving
- › how quickly you need the property sold.

Make sure you understand all the pros and cons before deciding on a method of sale.

Private sale treaty

This is the most common method. In a private sale treaty, you will:

- › advertise your home and invite offers from prospective buyers
- › negotiate the sale with a buyer, usually with the assistance of an agent
- › sign a written contract with the buyer to complete the sale.

‘TO CONDUCT AN AUCTION, YOUR AGENT MUST BE A LICENSED AUCTIONEER.’

Public auction

An auction is a public sale conducted at a specific date, time and place. Prospective buyers bid and the property is sold to the highest bidder.

To conduct an auction, your agent **must be a licensed auctioneer**. You have the right to see their licence document (they must show you at your request). You can also check their licence online. Visit www.qld.gov.au/fairtrading to check the free licensing register. You can look an agent up by name or licence number.

Sale by tender

In a sale by tender, you:

- invite people to make you an offer by a certain date
- consider all the offers you've received by that date
- choose one or reject them all.

Costs

You will need to reimburse your agent for their expenses, but only if you agree on them (authorise them) beforehand. Get a detailed statement of all their expenses.

An agent must be fully accountable for how they use your money. Ask them to show you a marketing plan that outlines how, when and why they will spend the money.

If you pay in advance, the agent must place the money in their trust account. In order to pay for anything set out in the marketing plan, they must:

- › store the money in their trust account
- › only withdraw at the appropriate time and for the specified purpose
- › get a receipt.

Sale contract

Ask your agent for regular updates (written and spoken) about all offers.

Accepting an offer

Before signing, take a copy of the contract away and discuss it with your solicitor. Don't be pressured into signing a contract without seeking legal advice first.

Do not accept it unless:

- › you've read and understood all its terms and conditions
- › the buyer has signed it properly
- › you accept (and can fulfil) all the terms and conditions
- › you include the appropriate condition in the contract to pass covenants and agreements onto the buyer (talk to your lawyer for more details)
- › all the details (such as the address and property type) are correct.

When a buyer makes an offer you can:

- › accept the offer by signing the contract
- › reject the offer by not signing the contract
- › respond with a counter-offer.

Counter-offers

Counter-offers are a common way to negotiate. You can make a counter-offer by:

- › altering the contract to suit your terms
- › signing the contract in its updated form.

The buyer can accept your counter-offer by initialling the changes. If they do, the contract becomes binding. Otherwise, they may choose to reject your counter-offer or make an alternative counter-offer.

Make sure that you and the buyer initial all the changes, regardless of who proposed each one. Otherwise, your contract may become invalid.

‘THE COOLING-OFF PERIOD IS A CHANCE FOR THE BUYER TO CHANGE THEIR MIND.’

Deposit

Your contract should set out the payment date for the deposit. It should:

- › usually be due a few days after you finalise the contract
- › be paid into your agent’s trust account.

Ask your agent to tell you right away if they don’t get the deposit on time.

Cooling-off period

The cooling-off period is a chance for the buyer to change their mind.

No cooling-off period applies to:

- › a sale by auction
- › a follow-up sale within two days of an unsuccessful auction, in which the buyer was a registered bidder
- › a subsequent contract (with the same buyer) after your initial contract fell through.

'THE CONTRACT MUST INCLUDE A WARNING STATEMENT THAT INCLUDES DETAILS ABOUT THE COOLING-OFF PERIOD.'

To cancel the sale, the buyer must give you (or your agent) written notice by 5pm on the 5th day. They can deliver it in person, by email or fax. If they cancel, you may deduct a penalty of up to 0.25% of the purchase price from their deposit. You will need to refund the rest of the deposit within 14 days.

The contract must **include a warning statement** that includes details about the cooling-off period. It must:

- be written directly above the space for the buyer's signature
- use the required text only (or words with the exact meaning)
- be printed in a way that is clear and readable.

Visit **www.qld.gov.au/fairtrading** to get the required text or find out more about the cooling-off period.

Settlement day

Settlement can happen at any point you negotiate with the buyer. It is usually 4–6 weeks after you and the buyer sign the contract, and rarely more than 90 days later.

On settlement day, you will usually:

- › receive the remaining amount of the purchase price from the buyer
- › transfer the title of the property
- › hand over the keys
- › give possession of the property to the buyer.

This can be a complex transaction. Ask your legal and financial representatives to deal with the buyer or their representatives.

You are responsible for paying the usual costs (like council rates) until the end of settlement day. The buyer will start paying the next day.

You must leave your home vacant and clean. The buyer will conduct a pre-settlement inspection no more than a few days before settlement day. If it isn't in good condition, they can ask their lawyer to delay settlement until you fix the problem.



Problems with your agent

Resolving disputes

If you have a problem with a property agent, the first thing you should do is talk to them. Usually, people want to do the right thing and will be happy to fix any problems. You should write to the manager.

You can also talk to the Real Estate Institute of Queensland (REIQ) if your agent is a member. Visit the REIQ website, www.reiq.com.au, for more information.

Sometimes, the business won't help. If this happens, you can make a formal complaint. Visit www.qld.gov.au/fairtrading to explore your options.

Making a claim for compensation

We have set up a claim fund for anyone who has suffered a financial loss due to:

- › a real estate agent
- › a resident letting agent
- › an auctioneer
- › an employee of any of the above.

There are specific situations in which we can provide compensation for a financial loss. If one of these situations takes place, you can apply for compensation by making a claim to us.

Generally speaking, a financial loss might have been caused by:

- › an unlawful action or activity by an agent or auctioneer
- › an action that they didn't do (but legally should have done).

Visit **www.qld.gov.au/fairtrading** to find out about more about specific situations for making a claim.

The process for making and deciding a claim may be different depending on if it's:

- › a simple or complex claim
- › a claim about *marketeeing* (when an agent sells you a property by making false or misleading claims).

Visit **www.qld.gov.au/fairtrading** to learn more about making a claim against the Claim Fund.

Interpreting and relay services

For the national relay service for sight and hearing impaired phone **13 36 77**. For interpreting services phone **13 14 50**.

Arabic

لخدمات الترجمة الشفهية اتصل بالرقم 13 14 50.

Bosnian

Za prevodilacke usluge nazovite 13 14 50.

Dinka

Koor ba jam ne thondu ke yi yup telepuun 13 14 50.

German

Dolmetscherdienst unter Nummer 13 14 50 erreichbar.

Greek

Για υπηρεσίες διερμηνείας τηλεφωνήστε στο 13 14 50.

Hindi

दुभाषीय सेवाओं के लिए फोन करें 13 14 50.

Italian

Per avere un interprete chiamare il 13 14 50.

Japanese

通訳サービスは電話番号 13 14 50 へおかけください。

Korean

통역 서비스를 원하시면 13 14 50 으로 전화하십시오.

Samoan

Mo auunaga a faamatala'upu telefoni le 13 14 50.

Simplified Chinese

若欲取得口译服务，请您拨打 13 14 50.

Traditional Chinese

若欲取得口譯服務，請您撥打 13 14 50.

Spanish

Para servicios de interpretacion llame al 13 14 50.

Vietnamese

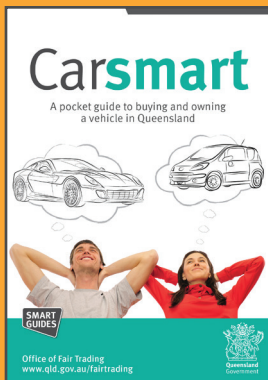
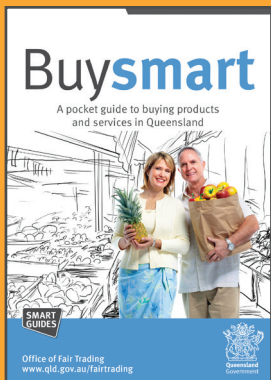
Muốn sử dụng Dịch vụ Thông Ngôn điện thoại số 13 14 50.

Notes:

This smart guide contains essential information about buying products and services in Queensland. You can find more information at www.qld.gov.au/fairtrading

There are other fair trading smart guides:

- **Buy smart:** A pocket guide to buying products and services in Queensland
- **Car smart:** A pocket guide to buying and owning a vehicle in Queensland



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