



Risk-Based Compliance

September 2008

1. Introduction

The Better Regulation Office commenced its gatekeeping role through the requirements in the *Guide to Better Regulation* in June 2008. The Guide provides information about good regulatory practice to avoid the creation of red tape in new proposals and to reduce existing regulatory burden as regulation is reviewed.

The Guide requires government agencies to apply the seven better regulation principles. Principle three is that the impact of government action should be properly understood by considering the costs and benefits of a range of options. A risk-based approach to compliance is recommended under this principle. The Guide can be found on the Better Regulation Office's website at: www.betterregulation.nsw.gov.au.

'Compliance' is defined in this paper as a situation where regulatory requirements are met. Businesses or individuals take action to comply with regulatory requirements and agencies take action to ensure compliance such as education, enforcement, prosecution and other tools to change behaviour. 'Non-compliance' is defined in this paper as a situation where an individual or organisation does not follow the regulatory requirements.

This document complements the Guide by assisting agencies to develop a risk-based approach to compliance. The material in this document sets out basic methods adapted from AS/NZS 4360:2004. Agencies may also refer to other guidance material such *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance* by Malcolm Sparrow.

The Better Regulation Office is available to provide agencies with assistance and advice. Agencies working on significant regulatory proposals should consider approaching the Better Regulation Office early in the development process.

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2. A risk-based compliance approach

Even well designed regulatory solutions can lead to poor outcomes if compliance measures are not appropriately targeted. Establishing a system that encourages compliance and provides regulatory agencies with information about who is and is not complying will ensure a better regulatory outcome. The compliance approach should ensure that individuals or businesses that are not complying are identified and those doing the right thing are not subject to unnecessary compliance costs. The system should also ensure that agencies spend resources efficiently.

A risk-based compliance approach enables resources to be targeted to the areas where they are most needed and will prove most effective. It involves a series of steps to identify and assess non-compliance risks and then apply appropriate compliance measures to control these risks.

Risk-based compliance has a range of benefits.

Improved compliance outcomes – agencies can tailor compliance measures to effectively deal with the most significant non-compliance risks.

Efficiency gains – the targeting of compliance measures to the most significant risks ensures resources are concentrated in the areas where they most improve compliance outcomes.

Reduced business compliance costs – compliance activities imposing burdens on business are only carried out where needed, minimising costs. This means that businesses will only be inspected, audited or have to provide data where it is justified.

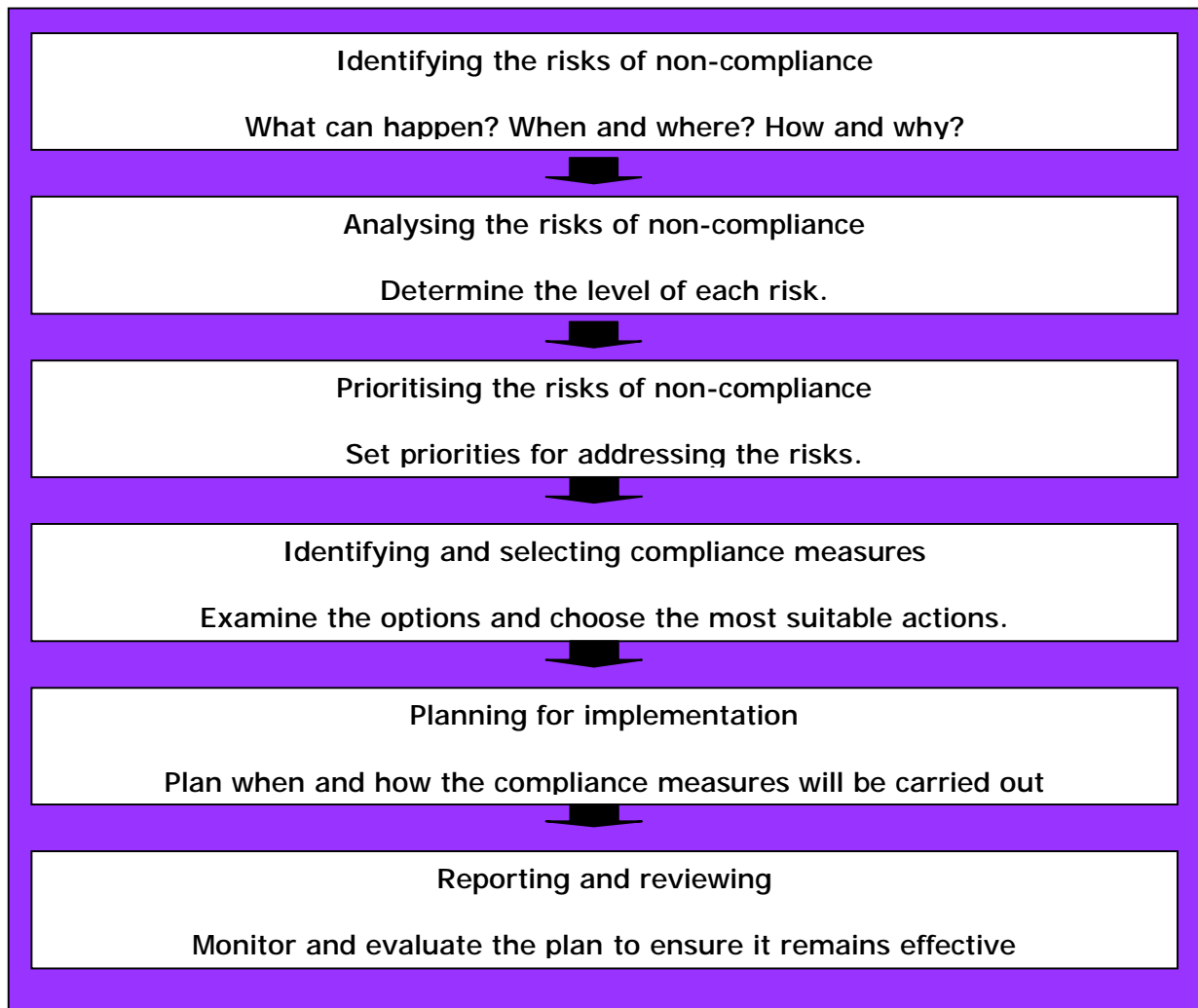
Greater business support for compliance measures – risk management processes are widely understood by business.

All agencies conducting compliance work should consider adopting a risk-based approach because benefits are likely to be achieved in all regulatory areas. Agencies should also be aware that while there could initially be some additional costs in carrying out the processes involved, these costs are likely to be outweighed by the efficiencies gained from improved targeting of resources over time.

3. How to adopt a risk-based compliance approach

Developing a risk-based compliance approach involves carrying out the risk assessment steps described below.

Figure 1



It is important that the following key principles are kept in mind when carrying out each of these steps.

Consultation – the views of stakeholders should be sought at all relevant stages of the process consistent with the better regulation principles set out in the *Guide to Better Regulation*. Conducted early in the process, consultation can help identify and evaluate non-compliance risks and determine viable compliance measures to deal with them. Consultation can also help government understand all the risks and impacts of particular compliance measures.

Proportionality – the amount of time, effort and other resources spent developing a risk-based compliance approach should be proportionate to the significance of the non-compliance risks consistent with the principles in the Guide. The proportionality principle should inform decisions about the scope of the risk assessment, the amount of consultation needed and the level of detail required in

implementation planning, among other things. For instance, the risks of non-compliance with occupational health and safety requirements will need to be assessed fully where people may be severely hurt as a result of the non-compliance. Similarly, if a proposed compliance measure involves large costs for industry, detailed consultation will be needed.

The steps involved in developing a risk-based compliance approach are outlined in the following sections.

4. Identifying risks of non-compliance

The risks of non-compliance need to be identified and considered in detail. A failure to properly consider risks can lead to the selection of inappropriate compliance measures and ineffective regulatory outcomes.

The following factors should be examined:

The nature of the risk – what event or incident happens, when and where?

The source of the risk – what types of people or businesses will be involved?

The cause of the risk – why does the risk occur, direct and underlying reasons?

The effect of the risk – what is the impact upon the regulatory outcome, who will be adversely affected? There may be a range of different effects that need to be identified.

It will be necessary to use information on previous cases of non-compliance as well as the knowledge of staff in examining these matters.

An example of identifying risks of non-compliance in the waste management field is provided in Table 1.

Table 1

| Nature of the risk | Source of the risk | Cause of the risk | The effect of the risk |
|---|--|--|--|
| Illegal dumping of hazardous waste | <ul style="list-style-type: none"> • waste disposal operators • transport companies • manufacturers • construction companies | <ul style="list-style-type: none"> • unwillingness to pay for legal disposal • lack of knowledge about the requirements | <ul style="list-style-type: none"> • cost of clean-up and remediation and amenity impacts from illegal dumping • cost of land, water or groundwater pollution from inappropriate disposal • human health impacts related to spills of toxic chemicals or prolonged exposure to toxic substances • other environmental impacts, such as fish kills or agricultural losses through exposure to hazardous materials • unfair competitive advantages gained by non-compliant operators over other operators |
| Non-compliant waste storage | <ul style="list-style-type: none"> • manufacturers • transport companies • construction companies • waste storage and disposal companies | <ul style="list-style-type: none"> • lack of knowledge of the requirements • failure to invest in infrastructure • inadequate training of staff • staff negligence | <ul style="list-style-type: none"> • cost of clean-up and remediation and amenity impacts from inappropriate storage • cost of land, water or groundwater pollution from non-compliant storage • other environmental impacts, such as fish kills or agricultural losses through exposure to hazardous materials • unfair competitive advantage gained by non-compliant operators over other operators |
| Failure to cover transported load as required | <ul style="list-style-type: none"> • waste disposal contractors • transport companies • construction companies | <ul style="list-style-type: none"> • inadequate training of drivers • driver negligence • failure to invest in appropriate covers | <ul style="list-style-type: none"> • cost of clean-up and remediation and amenity impacts from the spillage • cost of land, water or groundwater pollution from spillage • human health impacts related to spills of toxic chemicals or prolonged exposure to toxic substances • other environmental impacts, such as fish kills or agricultural losses through exposure to hazardous materials |

5. Analysing risks of non-compliance

The risks of non-compliance should be analysed so that the level of the risk can be understood. This information is important because it will be used to decide which risks the agency should focus most attention on. The level of the non-compliance risk is determined by consideration of the negative consequences of the non-compliance risk and the likelihood of the non-compliance risk. This is determined using either quantitative, semi-quantitative or qualitative analysis.

Quantitative analysis

Agencies should use quantitative analysis, where possible, because it is the most objective and accurate method of analysis. Quantitative analysis can be used to determine the consequences and likelihood of non-compliance where verifiable data is available.

Quantitative analysis involves using numerical values to rate the seriousness of the potential consequences of non-compliance and the likelihood that it will occur. The overall level of risk is decided based on the likelihood and consequence ratings.

Where possible, quantitative analysis should be based on data from NSW. However, when this is not available, data from other jurisdictions can be applied to quantitatively analyse compliance risks. An example of this is shown below.

Example – foodborne illness from vegetable produce

NSW Food Authority (NSWFA) wished to determine the risk of foodborne illness due to unsafe food practices in respect of particular produce (fresh cut ready-to-eat vegetables, fresh cut fruit, vegetables in oil, seed sprouts and unpasteurised fruit juice).

First, NSWFA used data from a survey conducted in Tasmania to estimate the number of food related illnesses from any produce (and checked the estimate by comparing it with other estimates). This data produced an estimate of 4.2 million cases of food related illness from all produce in Australia. Based on the NSW population share (33.72% of the Australian total), NSWFA estimated that there would be some 1.4 million cases per year of food related illness from all produce in NSW.

NSWFA then used data from the USA to estimate the proportion of foodborne illness attributable to the particular produce of concern here. The US data suggested that some 8.6% of all foodborne illness was caused by the particular produce.

Using this percentage then gives an estimate that, of the likely 1.4 million cases per year of food related illness in NSW, some 121,797 cases are likely to be caused by the particular produce.

NSWFA then used these figures to determine a level of compliance risk, after making an assumption about the number of illnesses that were related to non-compliance.

Qualitative analysis

Qualitative analysis should be used if quantitative analysis is not feasible because inadequate data is available or where the costs of the quantitative assessment are out of proportion with the significance of the non-compliance risks. Qualitative analysis can also be used as a first step to identify risks which require further detailed analysis.

Qualitative analysis involves using judgement to describe in words the consequences and likelihood of non-compliance risks. Judgements should be based on available facts and data. Agencies should categorise the level of risk based on an implicit judgement of the consequences and likelihood of a risk and the significance of each factor. This is illustrated in Figure 2.

Figure 2

| | | Likelihood | | | |
|-------------|----------|-------------|-------------|-------------|-------------|
| | | Remote | Unlikely | Infrequent | Frequent |
| Consequence | Minor | Low Risk | Low Risk | Medium Risk | Medium Risk |
| | Moderate | Low Risk | Medium Risk | Medium Risk | High Risk |
| | Major | Medium Risk | Medium Risk | High Risk | High Risk |

Semi-quantitative analysis

Semi-quantitative analysis involves using knowledge and experience to assign values representing the consequences and the likelihood of non-compliance instead of using word descriptions. This method allows the level of risk to be decided mathematically from the values assigned. This is illustrated in Figure 3.

Figure 3

| | | Likelihood (events/year) | | | |
|-------------|------------|--------------------------|--------------|--------------|-------------|
| | | 0.01 Remote | 0.1 Unlikely | 1 Infrequent | 10 Frequent |
| Consequence | 1 Minor | 0.01 | 0.1 | 1 | 10 |
| | 2 Moderate | 0.02 | 0.2 | 2 | 20 |
| | 3 Major | 0.03 | 0.3 | 4 | 30 |

Semi-quantitative analysis enables risks to be ranked based on numerical values. In the example, risks with a level of 10 or higher could be considered high risk, risks with a level between 1 and 10, medium risk, and the risks below 1, low risk. Depending on the context, weightings may need to be applied to the likelihood or consequences values in order to reflect the risk more realistically. For example, while the chances that a major pollution spill will occur in Sydney Harbour are low, the potential environmental damage caused to a location of great importance to NSW would justify increased weight being given to the consequence.

Semi-quantitative analysis can also be used when part of the level of the risk cannot be analysed using quantitative analysis. For instance, there may not be enough data to support quantitative analysis of the likelihood of a risk but quantitative analysis of the consequences may be possible. In this case, the level of risk could be determined based on the qualitative analysis of the consequences and the quantitative analysis of the likelihood.

Example – noise offences

The Police Infringement Processing Bureau produces data based on the number of enforcement actions undertaken for breaches of noise control legislation. In the years 1995–2000, 3918 noise offence notices were issued in NSW under noise control legislation. The proportion of these offences that were caused by various noise sources is set out below.

| | |
|----------------------------------|-----|
| Noise source | |
| Alarms | 1% |
| Sound systems | 22% |
| Noisy vehicles | 25% |
| Defective/absent noise equipment | 24% |
| Other | 28% |

Regulatory agencies can use this data to determine the non-compliance risks.

Ensuring risk analysis is sufficiently accurate

Risk analysis cannot, by nature, be precise but it should be accurate enough to use as a basis to prioritise the compliance risks. To ensure the risk analysis is sufficiently accurate, agencies should bear in mind the following:

Carefully review semi-quantitative analysis – these results are based on the judgements of staff and not verifiable data as with quantitative analysis and need to be examined for anomalies and inconsistencies.

Clearly state assumptions – if it was necessary to make an assumption in analysing the non-compliance risks, it should be clearly stated and justified. This allows the assumptions to be later reviewed if more evidence comes to light.

Apply methodology consistently – the methodology used in quantitative and semi-quantitative analysis should be applied consistently so that risks are analysed on the same basis. This allows the level of each risk to be compared with other risks.

Appropriately consider uncertainty – agencies may need to take into account uncertainties surrounding the likelihood that a risk consequence will happen or the impact of the consequence.

Consider sensitivity analysis – this can be used to demonstrate how outcomes vary with changes in input assumptions. If outcomes are highly sensitive to a change in a particular input, greater certainty about that input should be sought where possible to improve the risk analysis.

6. Prioritising risks of non-compliance

Each non-compliance risk should be prioritised to ensure compliance activities are focused in areas where they are most needed. Priorities will be decided based on the risk analysis data and the considerations below.

The policies of the Government – the priority of the non-compliance risk should also reflect relevant Government policy, if any. The Government may be committed to addressing a particular non-compliance risk or may have a policy of treating certain types of non-compliance risks as an equal priority.

The objectives of the agency – the priority of the non-compliance risk should also reflect relevant objectives of the agency, if any. The agency may be seeking to address a particular non-compliance risk for strategic reasons. It may also decide to treat certain types of non-compliance risks as an equal priority to ensure consistency.

7. Identifying and selecting compliance measures

Compliance measures that can address the priority compliance risks should be identified and the most suitable compliance measures selected based on an assessment of the costs and benefits of each measure. This ensures that compliance measures address non-compliance risks in the most effective manner.

Identifying appropriate compliance measures

The measures that have the greatest potential to address the priority non-compliance risks should be identified. A range of possibilities are set out in Table 2.

Table 2

| | Compliance measure | Description |
|--|--|---|
| <p>Lower level of intervention eg. persuasion</p>  | Advice | Agencies respond to direct requests for advice or proactively make contact with people or businesses to inform them of their obligations. |
| | Guidance material | Guidance material is made available on agency websites or through pamphlets to explain requirements. |
| | Education campaigns | Agencies advertise to inform people and businesses about laws to persuade them to comply. The campaigns usually explain the reasons why regulations are in place or the negative impacts of non-compliance. |
| | Warnings or cautions | A person or business is warned or cautioned that they have not complied with regulatory requirements and that they may be penalised for this. |
| | Monitoring measures - data collection, auditing and inspection | Data collection - information is obtained from people and businesses for regulatory compliance purposes. Auditing - spot checks of the regulatory compliance records of people and businesses. Inspection - agencies view the activities of people or business to check they are complying with the regulations. |
| | Publication of names of offenders | The details of people or businesses that have breached regulations are publicised resulting in a loss of reputation. |
| | Enforceable undertakings | After a requirement is breached, the agency accepts an undertaking from the non-complier to do certain things to remedy the breach. Statutory penalties exist for failure to perform. |
| | Improvement notices | An agency requires a person or business to comply with a requirement within a specified time frame with a failure to do so resulting in a penalty. |
| | Prohibition notices | An agency requires a person or business to stop an activity where a regulatory breach has occurred. The activity can continue when the breach has been remedied. |
| | Penalty notices | An 'on the spot fine' is given for a breach of a regulatory requirement. The person or business is required to pay or elect to challenge it in court. |
| | Civil pecuniary penalties | A right created under legislation for a person or business to claim compensation from another party for a regulatory breach. |
| | Injunctions | A court order that stops a person or business from continuing to do a particular thing after a regulatory breach. |
| <p>Higher level of intervention eg. strict enforcement</p> | Negative licences | The person is restricted from undertaking an activity that otherwise requires no authorisation. |
| | Action against licences/ accreditation/ certification | The authorisation of a person or business to undertake an activity is restricted or withdrawn after a failure to comply with the conditions of the authorisation. |
| | Criminal prosecution | Legal proceedings are brought by the agency against a person or business because the law has been broken. A decision to prosecute is made when it is considered to be in the public interest. A range of very serious penalties can be given to a person found guilty of a criminal offence including large fines and imprisonment. |

When considering alternative compliance measures, there are a number of issues that should be considered:

Is non-compliance likely to be the result of inadvertent or deliberate actions? Agencies should assess the behaviours of the individuals and businesses which will be subject to the compliance measures. If it is identified that breaches are likely to be the result of a lack of information, educative measures should be used. Where individuals and businesses are likely to comply provided they see most others complying, it will be appropriate to publicise compliance norms and take tough action for breaches as a deterrent. Strict enforcement measures should also be used to deter those who are resistant or who seek advantage through non-compliance.

Can one-off, careless and less serious non-compliance be appropriately dealt with as well as persistent, malicious and more serious non-compliance? It may be appropriate to issue a warning or apply a less serious penalty for one-off or careless non-compliance that has a relatively minor impact. Persistent, malicious or more serious non-compliance would usually be better dealt with by a strict enforcement measure to deter that behaviour.

Should a combination of measures be used? A combination of measures is often more effective than one measure used in isolation. Agencies can choose to educate and provide guidance material at the same time as inspecting for non-compliance, and may have a range of options for dealing with non-compliance. Having a combination of measures allows agencies to be responsive to the actions of the regulated party as the agency is able to escalate to harsher measures if a non-complier continues to do the wrong thing after they are given warnings or penalty notices. The availability of severe measures can make persuasive measures more effective. Individuals and businesses are often more likely to respond to persuasive measures knowing that they may be penalised if they do not comply.

What will be the economic impact of the measures? In general, persuasive measures will not impose costs on business whereas strict enforcement measures can impose significant costs. In particular, licensing regimes with prescriptive standards can force businesses to follow outdated and costly procedures. Prescriptive measures also discourage innovation as there is no incentive to find cheaper or more effective ways of doing things.

Is there regular or infrequent contact between the regulator and the regulated party? When the regulator rarely comes into contact with the regulated party it is more likely that non-compliance will not be discovered. In these cases, it may be more important to implement measures to deter non-compliance.

Tailoring appropriate compliance measures

When identifying compliance measures, agencies should also consider how each can be tailored to most effectively target the risks. It may be possible to develop options that focus on the highest risk businesses to minimise costs for business and government.

For instance, if a licensing regime is under consideration, it may be possible to set out a range of licensing requirements that reflect the priority risks. Data collection, auditing or inspection may also be able to be targeted to the highest risk businesses. NSW Food Authority activities provide examples of a tailored approach.

Example – food safety licensing

Under food safety legislation, the businesses that present the highest non-compliance risks, including certain meat, seafood and dairy businesses, must be licensed. These businesses are required to meet food safety standards and must have food safety programs in place.

Food businesses that present lower priority non-compliance risks must meet less onerous requirements. These businesses are required to notify NSW Food Authority of their food activity details rather than having to obtain a licence. They are also obliged to meet food safety standards but not to implement a food safety program.

Example – food safety auditing

Food businesses that are required to be licensed and have food safety programs are subject to regular auditing. The businesses are categorised as either a 'Priority One' or 'Priority Two' business depending on the risks associated with that type of business. 'Priority One' businesses are audited every six months and 'Priority Two' businesses every twelve months. After each audit, businesses are given a performance rating.

A rating of 'A' or 'B' means the business has passed the audit. A rating of 'C' is marginal. 'D' or 'E' means the business has failed the audit. The frequency of the next audit is based on the audit performance and the priority category of the business as set out below.

| Audit rating | Priority One | Priority Two |
|--------------|--------------|--------------|
| A or B | 6 months | 12 months |
| C | 3 months | 6 months |

A business that fails the audit is subject to a follow up audit and one additional audit and must pass both before returning to the normal frequency of audits.

| Rating | Follow up audit | Additional audit |
|--------|-----------------|------------------|
| D or E | 1 month | 2 months |

For more information, refer to <http://www.foodauthority.nsw.gov.au/industry/>.

Selecting the most appropriate compliance measures

It is then necessary to choose which compliance measure or suite of measures should be used to address the risks of non-compliance. The selection of compliance measures should be based on the costs and benefits of each compliance option. The *Guide to Better Regulation* provides guidance on how to assess the costs and benefits – refer to principle three of the better regulation principles (page 12 of the Guide). Agencies should also refer to *Measuring the Costs of Regulation*, available on the Better Regulation Office website, when seeking to quantify compliance costs.

Example – occupational health and safety

WorkCover assessed the costs and benefits of various compliance measures to address non-compliance with workplace safety requirements and concluded that a range of measures should be made available to deal with the different types of non-compliance.

| Compliance measure | Description | Penalties |
|--------------------------------------|--|--|
| Information | Provided where a minor breach has occurred and the information will be effective in remedying the problem. | |
| Improvement notices | Used where there is a particular hazard or potential risk to health and safety that needs to be rectified. | Maximum penalties for failure to comply with a notice range from: \$82,500 for a corporation; \$41,250 for a non-employee; and \$2,475 for an employee. |
| Prohibition notices | Issued when an inspector is of the opinion that a situation is of immediate risk to the health and safety of people and requires the cessation of work or activity until the situation is made safe. | Maximum penalties for failure to comply with a notice range from: \$165,000 for a corporation; \$82,500 for a non-employee; and \$4,950 for an employee. |
| Penalty notice or 'on-the-spot' fine | Issued in order to highlight the seriousness of health and safety in the workplace to deter non-compliance behaviour. | Penalties range from \$200 – \$1,500 depending on the offence. |
| Prosecution | Used where it is in the public interest that court action be taken over the breach. | Refer to the <i>Occupational Health and Safety Act 2000</i> http://www.legislation.nsw.gov.au/ . |

Additional details are available at
<http://www.workcover.nsw.gov.au/LawAndPolicy/Pages/default.aspx>.

8. Planning for implementation

Once compliance measures have been chosen, it is necessary to identify when particular compliance measures should be used. This will ensure that compliance measures are appropriate to circumstances and that inconsistent or heavy handed compliance measures are not used. It will also help to ensure that the compliance activities are coordinated, appropriately resourced and remain effective over time.

Setting out a compliance plan

A compliance plan should match the compliance measures selected and the circumstances in which each should be used. In some policy areas it will be straightforward to decide when to implement compliance measures. In other areas there will be a wide range of factors that need to be considered.

It may be appropriate to allow sufficient flexibility in the compliance plan so that agencies can be strategic in their compliance activities. An agency may need to use a tough measure to deter non-compliance that has a particularly bad impact. The agency may also need to occasionally apply a strict enforcement measure for minor non-compliance as a deterrent. This maintains the integrity of the regulatory system by preventing a situation occurring whereby individuals and business do not comply because they know they will not be penalised. Enforcement action could also reflect whether non-compliance was deliberate or inadvertent.

Guiding staff on which compliance measures to use

Guidance material for staff should set out how to determine which compliance measure to use. It may also be useful to provide staff with steps to follow when investigating the non-compliance. Guidance material should be as easy to understand as possible.

Example – illegal dumping

The Department of Environment and Climate Change (DECC) provides advice to councils about when to use compliance measures available under the *Protection of the Environment (Operations) Act 1997* (POEO Act).

DECC provides information (see Table 3 and Figure 4) which sets out the preconditions which must exist before each compliance measure can be used, the circumstances in which each should be used and information about the penalties available under each measure.

Table 3

| Notices under the POEO Act | Precondition for use | When to use | Maximum penalty for prosecution | Penalty notice (On-the-spot fine) |
|---|--|---|---|---|
| Clean-up Notice (s91) | Reasonable suspicion that pollution incident has occurred or is occurring. | For quick response to incidents. Clean-up action must be specified in the notice. | Penalties issued for non-compliance with the notice. Corporation \$1million, and for each day the offence continues \$120,000. Individual \$250,000, and for each day the offence continues \$60,000. | Penalties are issued for non-compliance with the notice. Corporation \$1,500, individual \$750. |
| Prevention Notice (s96) | Reasonable suspicion that activity has been or is being carried out in an environmentally unsatisfactory manner. | To deal with more systemic pollution and waste management problems. Preventive action must be specified in the notice. | Penalties are issued for non-compliance with the notice. Corporation \$1 million, and for each day the offence continues \$120,000. Individual \$250,000, and for each day the offence continues \$60,000. | Penalties are issued for non-compliance with the notice. Corporation \$1,500, individual \$750. |
| Compliance Cost Notice (s104) | Where the council incurs costs in ensuring compliance with a clean-up notice or prevention notice. | Provides for recovery of compliance costs, including monitoring. | Legal action to recover amount owing. | None |
| Notices to provide information and records (s191 and 193) | Can be used to check compliance with POEO Act and Regulations. Can also be used in relation to any matter related to the council's responsibilities or functions under the POEO Act. | When information or records are needed for an investigation. | Penalties are issued for non-compliance with the notice. Corporation \$1million, and for each day the offence continues \$120,000. Individual \$250,000, and for each day the offence continues \$60,000. | Penalties are issued for non-compliance with the notice. Section 211 (1) of the POEO Act: corporation \$1,000, individual \$500. |
| Penalty Notice | An offence against the POEO Act and the POEO (Penalty Notices) Regulation states that a penalty notice can be issued. | Can be used to fine offenders 'on-the-spot' for breaches of s143, 144 of the POEO Act as well as failure to comply with notices or pay notice fees. | Various | Various |

Figure 4

ILLEGAL DUMPING

Search for ownership evidence in the material.
 Identify and talk to potential witnesses.
 Photograph and record dumping evidence.
 Decide whether the material should be cleaned up or rendered safe immediately.
 If practical, secure illegally dumped material with advisory/investigation stickers and tape to deter other illegal dumpers.

Dumper identified?

NO

Check the council's property records for owner, occupier or managing agent of land. Send a letter or investigation notice (s192 or s193 of POEO Act) to obtain evidence (for example who, when, what, why and how the material was dumped). Interview persons of interest to obtain evidence.
 Depending on evidence:

- search for property information
- vehicle registration
- company records
- telephone numbers/internet listings.

YES

Collect evidence to prove elements of offence (s115, s142A, s143 or s144 of POEO Act). Depending on circumstances, issue either:

- a letter requiring removal of the material.
- Clean-up Notice (s91 of POEO Act).

Dumper identified?

YES

Collect evidence to prove elements of offence (s115, s142A, s143 or s144 of POEO Act). Depending on circumstances, issue either:

- a letter requiring removal of the material
- Clean-up Notice (s91 of POEO Act).

NO

The landowner/manager to remove the material. Plan and carry out illegal dumping prevention action eg. distribute educational material.

Materials removed?

YES

Consider prosecution, penalty notice or written warning for the offence.

NO

Consider moving the material and issuing a cost compliance notice under s104 of POEO Act. Consider either prosecution or penalty notice for POEO Act offence under s115, s142A, s143, s144 or s91(5).

Materials removed?

YES

Consider removing the material and issuing a cost compliance notice under s104 of POEO Act. Consider either prosecution or penalty notice for POEO Act offence under s115, s142A, s143, s144 or s91(5).

NO

Consider prosecution, penalty notice or written warning for the offence.

If a more flexible approach is needed, general guidance such as that provided below by WorkCover may be more appropriate.

Example – Occupational Health and Safety

WorkCover chooses the most effective compliance measure after evaluating each occupational health and safety non-compliance taking into account a number of factors, including:

- the nature of the workplace issue and how serious it is;
- commitment in the workplace to implementing systems that will ensure lasting improvement to occupational health and safety; and
- the time the workplace may need to address the issue.

Ensuring compliance activities are coordinated and appropriately resourced

It is important that implementation is integrated into the broader management and budgetary processes of the agency. This will ensure that areas responsible for undertaking compliance activities are aware of their roles and appropriately resourced to do the necessary work. It will not always be possible to predict the amount of resources needed with a high degree of certainty because, by nature, a risk-based approach requires a flexible response to non-compliance. For instance, if there are a large number of serious cases of non-compliance in a particular year more strict enforcement measures than expected may be needed. Management will need to consider making adjustments to resources in these cases.

Publishing the compliance policy

Compliance policies should be published on agency websites so that business and individuals understand the agency's approach. This information can increase the legitimacy of the agency's compliance work by making it more transparent and open to scrutiny. Stakeholders may also suggest worthwhile improvements.

Examples of publicly released compliance policies can be found at:

- <http://www.environment.nsw.gov.au/vegetation/index.htm> (Compliance Under the Native Vegetation Act 2003);
- <http://www.foodauthority.nsw.gov.au/industry/> (NSW Food Authority Compliance and Enforcement Policy); and
- <http://www.workcover.nsw.gov.au/LawAndPolicy/Pages/default.aspx> (WorkCover Compliance and Prosecution Guidelines).

9. Reporting and reviewing

It is important that performance is reported on a regular basis so that the effectiveness of the approach can be monitored. Agencies should consider identifying key performance indicators that can be used to measure performance over time. Ideally, reporting would be based on the regulatory outcomes rather than the number of compliance measures undertaken as these will not always provide a good indication of whether the approach has been effective. However, it may be difficult to measure regulatory outcomes, particularly in the early stages of the compliance plan, and details of the number of prosecutions undertaken may be used as a performance indicator in these circumstances.

In order to ensure that the implementation plan continues to be effective over time, periodic reviews should be carried out. It is important to ensure that the development process is fully documented and kept on file to allow the review to be carried out. Reviews should revisit all steps of the compliance plan development process. There may be new information to assess non-compliance risks or new information on the effectiveness of compliance measures.

References

AS/NZS 4369:2004: Risk Management

<http://www.saiglobal.com/shop/script/search.asp>

HB 436:2004 (Guidelines to AS/NZS 4360:2004): Risk Management Guidelines Companion to AS/NZS 4360:2004

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Sparrow, M; *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance*, Brookings Institution Press, Washington, DC, USA, 2000