

# **Regulatory Compliance Guidelines**

August 2007

Regulatory Impact Analysis Unit

Effective Markets Branch

ISBN 978-0-478-31079-5 (PDF)

ISBN 978-0-478-31080-1 (HTML)

## **Contents**

EXECUTIVE SUMMARY .....	2
INTRODUCTION .....	4
COMPLIANCE PRINCIPLES.....	5
A FRAMEWORK FOR ACHIEVING COMPLIANCE.....	6
REGULATORY COMPLIANCE GUIDELINES.....	8

## **Figures**

Figure 1: A framework for considering compliance	7
Figure 2: Braithwaite's Pyramid	11

# 1. Executive Summary

---

1. Proper consideration of compliance and actions to achieve it are critical to the success or failure of regulatory policy.
2. Cost effective compliance is most likely to be achieved when both policy makers and regulators give proper consideration to their development, implementation and review of actions and strategies to achieve compliance – both at the time of policy development and also during and after implementation.
3. This requires consideration of:
  - a. The strategic context for regulation including the:
    - reasons for regulation
    - outcomes and objectives of regulation
    - context in which regulatory decisions will be made and implemented
    - relationships and linkages to other areas of regulation
  - b. The operational context for regulation including the:
    - characteristics of the sector or population being regulated
    - extent to which the need for and outcomes of regulation are accepted
    - likelihood of compliance or non-compliance
    - capacity and capability of the regulator to administer and enforce the regulations
  - c. Strategies for achieving compliance including the:
    - actions to be taken by the regulator or provided for in law to achieve compliance
    - the appropriate balance or mix of actions to: communicate regulatory requirements, monitor compliance, warn those that are non-compliant of the consequences of continued non-compliance, enforce requirements and apply sanctions
    - the respective roles of central government agencies, industry bodies, private individuals and others in achieving compliance
  - d. How implementation will be achieved including:
    - defined roles and accountabilities for implementation

- identification and planning for necessary implementation tasks
  - adequate consideration of resources and funding
- e. Monitoring and review including:
- Consideration of how compliance will be monitored and the effectiveness of plans and actions for achieving it evaluated

## 2. Introduction

---

4. The government's Quality Regulation Review seeks to ensure that New Zealand's regulatory environment is effective in meeting its objectives – and does so at least cost to the economy. This requires careful attention to compliance in order to achieve effectiveness without imposing unnecessary costs on those being regulated and the public.
5. Proper consideration of compliance and of how it is to be achieved is critical to the success or failure of regulatory policy. Studies and anecdotes from OECD countries suggest that inadequate attention to compliance often underlies regulatory failure<sup>1</sup>.
6. To ensure that compliance is given adequate consideration in the design and implementation of regulatory proposals the Ministry of Economic Development has developed these “Regulatory Compliance Guidelines” as part of the Quality Regulation Review. These guidelines are part of the suite of guidance produced to assist high quality policy development. They should be read in conjunction with the Regulatory Impact Analysis Regime Guidelines. For guidance on each stage of policy development, you should visit the Policy Development Toolkit<sup>2</sup>.
7. These draft guidelines are intended as a practical tool to be used by:
  - a. Policy makers in advising on regulatory policy proposals
  - b. Cabinet Ministers and their advisers in considering regulatory policy proposals
  - c. Regulators in implementing regulatory policies
  - d. Parliament in reviewing the effectiveness of regulatory policies
8. Rather than imposing a ‘tick box’ approach to compliance, these guidelines describe five outcomes that should be achieved in the development and implementation of strategies to achieve compliance. They include questions to guide policy makers and regulators in this work.
9. The guidelines were developed in consultation with regulators and policy advisers from across government.

---

<sup>1</sup> OECD (2002), Regulatory Policies in OECD Countries – from interventionism to regulatory governance, ISBN 92-64-19893-8.

<sup>2</sup> The Policy Development Toolkit is available at <https://psi.govt.nz/pdtoolkit/default.aspx>

### 3. Compliance principles

---

- 10 These Regulatory Compliance Guidelines are based on the following principles:
- a) **Compliance and strategies to achieve it should be considered when regulatory policy is first developed.** This is because compliance and the costs of achieving acceptable levels of compliance are material to decisions on whether or not to regulate.
  - b) **Strategies for achieving compliance should be transparent.** This is so that decision makers, regulators and evaluators can understand how acceptable levels of compliance will be achieved and how strategies for achieving compliance will contribute to the objectives and outcomes underpinning a decision to regulate.
  - c) **Compliance strategies should be proportionate to the size of the problem being regulated for.** This is to ensure that the costs of achieving compliance are not disproportionate to the size of the problem and intended benefits of regulation.
  - d) **Compliance strategies should reinforce related policy outcomes and objectives.** This is because different approaches to achieving compliance can either reinforce or detract from related policy outcomes and objectives.
  - e) **Compliance strategies should be sensitive to the situation being regulated.** This is because different situations may necessitate different approaches to achieving compliance if regulation is to be effective.
  - f) **All the costs of compliance should be considered.** This is because the approach taken to achieving compliance needs to be cost effective, in the wider economic sense – and the benefits of compliance need to be balanced against all costs including the costs to innovation and enterprise
  - g) **Compliance strategies should change as relevant circumstances change.** This is because the context of regulation may change meaning that the approach initially taken to achieve compliance may no longer be appropriate.
  - h) **Enforcement is only one element of compliance.** This is because effective regulation often requires understanding and acceptance of the purposes of regulation by those being regulated.
  - i) **Compliance outcomes should be measurable and reviewed over time.** This is so that the effectiveness of the regulatory policy and related compliance strategies can be monitored and reviewed over time.

## 4. A framework for achieving compliance

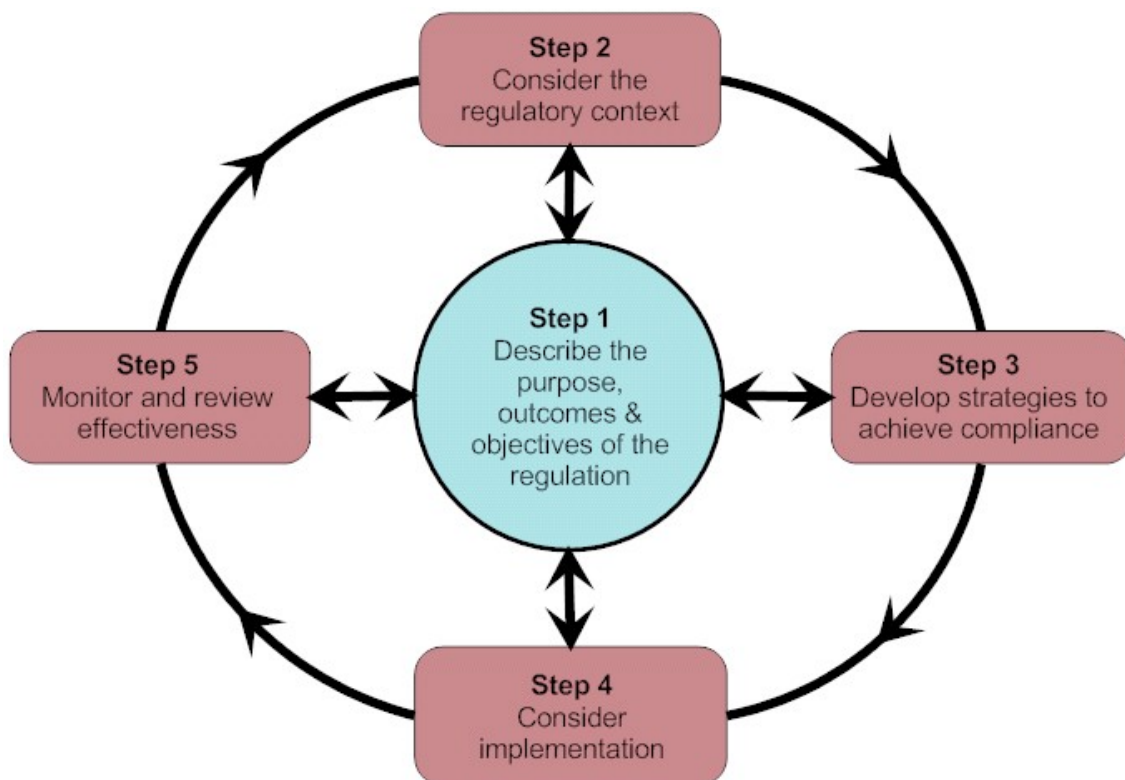
---

11. Achieving cost effective compliance requires consideration, development and implementation of appropriate strategies to achieve it by policy makers and regulators. Such strategies will normally be developed in consultation with stakeholders and will be informed by a thorough understanding of the regulatory context and environment.
12. Effective compliance strategies will be proportionate and sensitive to the size and nature of the regulatory problem, the purpose and objectives of the regulation, related policy outcomes and objectives and related regulatory interventions (both domestically and internationally).
13. Effective compliance strategies will also take account of the particular regulatory context and the nature of the population or sector being regulated including its willingness, capacity and capability to comply. They will also take account of any:
  - i. any policy or operational constraints that might impact on achieving compliance;
  - ii. the particular characteristics of the regulatory environment that might have implications for the design of compliance strategies
  - iii. any related regulatory interventions or compliance strategies that can be built upon to achieve compliance.
14. The extent to which compliance is achieved and the effectiveness of particular strategies for achieving it should be measurable and reviewed over time to ensure they keep pace with the changing regulatory context and environment.
15. The need for compliance and appropriate strategies to achieve it may change over time as the regulatory environment and context changes. This means these guidelines should not be regarded as linear, nor applied only at a particular point in time. Instead, assumptions should be tested and revisited in light of real world experience and changing policy and operational circumstances.
16. These guidelines have been organised so that both policy makers and regulators, in their design, implementation and management of compliance strategies, take into account:
  - a) The purpose, outcomes and objectives that the regulation is intended to contribute to and the wider policy and socio-economic context in which its is being implemented
  - b) The specific regulatory context including the capabilities and attitudes to regulation of those being regulated
  - c) How measures to achieve compliance will be implemented

d) How compliance and the effectiveness of compliance strategies will be measured

17 This framework is summarised in figure 1 below. While it is shown as a series of related steps to be worked through by policy makers, in practice each step may need to be considered more than once as compliance strategies are developed, implemented and reviewed. For instance, a change in the situation being regulated, such as less positive attitudes to compliance by those being regulated (than assumed by policy makers) may require reconsideration of strategies and measures part way through implementation.

**Figure 1: A framework for considering compliance**



## 5. Regulatory Compliance Guidelines

---

### 5.1 Step 1: Consider the strategic context of regulation

18. The required outcome of this step is to demonstrate a good understanding of:
- the reasons for regulation
  - the outcomes and objectives that regulation is expected to contribute to
  - the context in which regulatory decisions will be made and implemented
  - any critical relationships or linkages to other areas of regulation
19. This is necessary to help ensure that the approach proposed to achieving compliance is appropriate and sensitive to the broader context in which regulatory decisions will be made and implemented. A centralised approach to enforcing compliance may, for instance, be inappropriate in the context of a desire to build industry capability and responsibility. In such a circumstance, a role for industry in enforcing compliance may be more appropriate.
20. The following questions are intended to help ensure an adequate understanding of the purpose, outcomes and objectives for regulation.
1. ***What is the size and nature of the problem or risk that is being regulated for?***
  2. ***What are the purposes or objectives of the regulatory intervention?***
  3. ***Are there related policy outcomes or objectives that should also be taken account of in designing the compliance regime?***
  4. ***How important is compliance to wider government outcomes and objectives?***
  5. ***What are the relationships or linkages between this and other areas of regulation (both domestic and international)***
21. If this context changes the approach taken to achieving regulatory compliance will need to be reviewed and maybe modified.

### 5.2 Step 2: Consider the operational context of regulation

22. The required outcome of this step is to demonstrate a good understanding of:
- the operational context including the characteristics of the sector or population being regulated
  - the extent to which the need for and outcomes of regulation are accepted
  - the likelihood of compliance or non-compliance

- the capacity of the regulator to administer and enforce the regulations
23. Particular characteristics of the context will have material implications for the design of the compliance regime. For instance, a context in which the reasons and need for compliance are well understood, and the means of achieving compliance are within the capacity of those being regulated, would require less of an emphasis on initial communication of regulatory requirements than a regulation that is novel or new.
  24. Consultation with stakeholders and affected members of the public will help build this understanding. In interpreting the results of consultation policy makers and regulators should seek to validate that the views gained are representative of all stakeholders and affected parties.
  25. Consultation may also be an important element of the compliance strategy – in communicating the reasons for regulation, the public good that is associated with regulation and ensuring widespread understanding of the need for regulation and a willingness to comply.
  26. The following questions are intended to help ensure an adequate understanding of the regulatory context.

**6. *Who is required to comply with the regulation?***

- The population at large?
- A particular population sub group?
- Businesses?
- Other?

6.1 How big is the target sector or population ?

6.2 Is it a clearly defined sector or population?

6.3 Is it a homogenous or heterogeneous sector or population?

6.4 Is it a sector or population that is generally well informed?

6.5 Is it a sector or population that is easy to communicate with?

**7. *How likely is compliance?***

7.1 Is the regulation novel or is there a history of related regulation?

7.2 Is the sector or population likely to comply?

- Is the sector or population supportive of the regulation?
- Does the sector or population have the capability to comply?

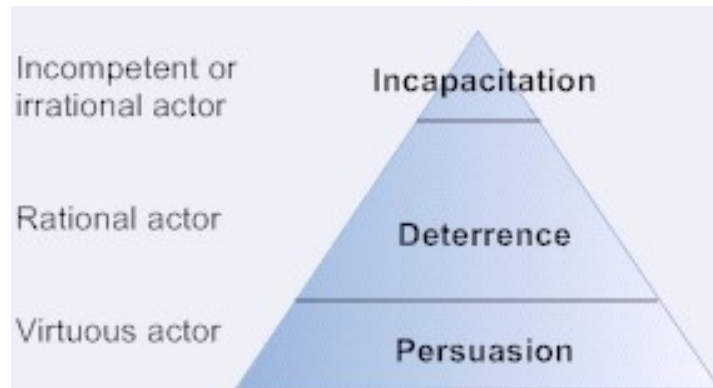
- Will members of the sector or population benefit from compliance (or face some or all of the costs of non-compliance)?
- 7.3 Are some parts of the sector or population less likely to comply than others?
- Which parts?
  - Why?
- 7.4 What is the expected level of non-compliance?
- ***Who would bear the costs of non-compliance?***
- 8.1 What type of risk or harm would result from non-compliance?
- 8.2 What would be the costs of the risk or harm occurring?
- 8.3 Who would bear the costs of the risk or harm occurring?
- Is it the same person, sector or population that is being regulated?
  - Does the person have the capacity to avoid the risk or harm?

### **5.3 Step 3: Develop the compliance strategy**

27. The required outcome of this step is a strategy or plan for achieving compliance.
28. This strategy or plan should build on the understanding of the strategic and specific regulatory contexts gained from steps 1 and 2. This strategy or plan will need to be revisited in light of the findings of any evaluation or review as provided for in step 5.
29. By compliance strategy we mean the actions and interventions that will be taken by the regulator or provided for in law to achieve compliance.
30. At one level this might be the communication of regulatory requirements to those being regulated. At another level it might be a letter of warning. At another level it might be punishment of those in breach of regulatory requirements. It might also entail a choice between central enforcement of regulatory requirements and empowering others to enforce compliance or to obtain redress in cases that harm does occur.
31. The spectrum of options for achieving compliance is shown in Braithwaite's pyramid below. In an ideal world the purposes and objectives of regulation will be widely accepted, those being regulated will willingly comply and the focus of the regulators activity will be at the base of pyramid. In the real world, however, not all of those being regulated will always be 'virtuous' actors'. A rational actor may weigh up the costs of compliance against the expected benefits of non-compliance, the probability of non-compliance being detected and act accordingly in their self interest. For reasons of incompetence, criminal intent or irrationality some actors may never willingly comply, and in

those circumstances the regulator might act to prevent non-compliant actors from engaging in further non-compliant behaviour or activity through measures such as removal of license or permits or even incarceration<sup>3</sup>.

**Figure 2: Braithwaite's Pyramid**



32. The rationale and assumptions underpinning the particular mix of strategies or actions chosen should be recorded so that they are transparent to decision makers and accessible to future regulators and policy makers, so that effectiveness can be reviewed and evaluated in future, and so that appropriate and informed choices made on it as knowledge improves and / or the regulatory context changes over time.
33. The following questions are intended to help ensure the adequate development of a compliance strategy.
  9. ***What are the outcomes, objectives and purposes of compliance (from step 1)?***
  10. ***What are the important elements of the regulatory context that will have implications for the design and implementation of the compliance strategy (from step 2)?***
  11. ***What is an acceptable level of compliance?***
    - 11.1 Is total compliance necessary?
      - How much compliance is needed for the regulation to be a success?
        - In the short term?
        - Over the medium to long term?
    - 11.2 Is strict compliance to the letter of the law necessary or is substantive compliance sufficient?

---

<sup>3</sup> Professor John Braithwaite (23 June 2004), 2004 Chief health Officer Seminar Series – Seminar One, Australian national University ([http://healthstewardship.anu.edu.au/\\_documents/Chief\\_Health\\_Officer\\_Seminar\\_Series/2004/Braithwaite\\_trans.pdf](http://healthstewardship.anu.edu.au/_documents/Chief_Health_Officer_Seminar_Series/2004/Braithwaite_trans.pdf))

- 11.3 Can non-compliance caused by omissions, accidental circumstances or unintended behaviours be tolerated?
12. ***Do those being regulated have the capacity to comply?***
- 12.1 Will it be necessary to build capacity within the regulated sector or population to achieve compliance?
- 12.2 If yes:
- Is it in the interest of the sector or population to develop its own capacity?
  - Is there a case (in the public good) for the regulator to work with the regulated sector or population to build its capacity and capability to comply?
  - If yes, what would be the role of the regulator be relative to that of the regulated sector or population?
13. ***Are there other critical factors in the policy environment that need to be addressed before compliance is possible?***
14. ***How will regulatory requirements be communicated?***
- 14.1 What will be done to ensure that those that those being regulated (and protected by regulation) become familiar with requirements and know what must be done to comply?
- Is it sufficient merely to publish the regulation?
  - Who is best placed to communicate regulatory requirements?
  - What means of communication will be most effective?
  - Is communication an initial or ongoing activity?
15. ***How will non-compliance be detected?***
- 15.1 Is it necessary to detect most or all cases of non-compliance?
- 15.2 Who will detect specific cases of non-compliance?
- The regulator
  - The sector or population being regulated
  - Those who suffer risk of harm?
- 15.3 What if any measures will be necessary to aid detection of non-compliance?

16. ***How will non-compliance be deterred?***

16.1 Is it necessary to enforce the requirements of the regulation in all detected cases of non-compliance?

16.2 Will persons be warned of the implications of continued non-compliance?

- Generally through public communications?
- Directly through specific communications?

16.3 What sanctions are appropriate in first and repeat cases of non-compliance?

- Warnings?
- Fines?
- Removal of rights, licenses or permits?
- Criminal sanctions?

16.4 Who will apply sanctions?

- Individual persons – through the courts or other means of redress?
- Industry or professional or other non-government bodies?
- A government regulator?

17. ***Is it clear how the compliance strategy is intended to:***

17.1 Help mitigate the problem that is being regulated for?

17.2 Contribute to the purpose, outcomes and objectives of regulation?

18. ***What are the expected costs of the proposed approach to achieving compliance?***

18.1 To the regulator, the regulated and any others that may be impacted?

18.2 Both over:

- The short term as the strategy is developed and implemented?
- Ongoing?

19. ***Are the expected costs of achieving compliance (to both the regulator and those being regulated) proportionate to the expected benefits of compliance?***
20. ***Has the compliance strategy been documented?***

## **5.4 Step 4: Implementation**

34. The required outcome of this step is an effective implementation strategy.
35. Successful implementation of a compliance strategy is most likely when:
  - roles and accountabilities for its implementation are clearly defined
  - when necessary activities and tasks have been identified and planned for
  - when resource / funding implications have been identified and addressed
36. The following questions are intended to help ensure the successful implementation of the compliance strategy.
  - 21 ***Who is accountable for implementation of the proposed compliance strategy?***
  - 22 ***What are the specific functions associated with achieving compliance?***
    - 22.1 Identify who is responsible for each including assumptions regarding non-government roles and functions?
    - 22.2 Consider linkages to other regulatory functions and whether any of these can be adapted or leveraged off?
  - 23 ***Do those with compliance related roles and functions have the capacities and capabilities necessary to perform them?***
    - Relevant technical expertise?
    - Relevant knowledge and experience?
    - Necessary relationships to the regulated sector and others
    - Necessary systems and processes?
    - Necessary staff and other resources?
  - 24 ***Describe the expected costs of compliance functions?***
    - 24.1 Over the short as new requirements are implemented?
    - 24.2 Ongoing?

25 ***Describe how the costs of compliance functions will be funded?***

25.1 How will meet the costs of compliance functions?

- By the tax payer?
- By those being regulated?
- Other?

25.2 What mechanism is proposed to collect the funds?

25.3 Will the proposed approach to funding reinforce incentives for compliance and cost effective regulation?

## **5.5 Step 5: Monitor, evaluate and review**

37. The required outcome of this step is a plan for monitoring and reviewing the effectiveness of the compliance strategy.

38. Monitoring and review of compliance is necessary to ensure that the approach taken to ensuring it is working as intended. Monitoring provides a basis for learning and making adjustments or changes to approaches as circumstances change, as the success of strategies is known, and as the regulated sector evolves and changes over time.

39. The following questions are intended to help ensure that the effectiveness of the proposed approach to achieving compliance is monitored and reviewed once implemented.

26 ***What will be done to monitor compliance?***

26.1 What will be measured?

- What are the yardsticks or indicators of success?

26.2 How will compliance be measured?

26.3 How frequently will it be measured?

- On an ongoing basis?
- At a particular point in time?

27 ***What will be done to review the effectiveness of the proposed approach to achieving compliance?***

27.1 How will information on compliance be used by the regulator to modify or adjust its implementation of the compliance strategy?

28 ***Is a full review of regulatory compliance planned?***

28.1 By who?

28.2 When?

28.3 If not, why not?

29 How will the results of any such review or evaluation be used?