

# Regulatory Compliance Activities - Quick Guide

## REGULATORY PRACTICE ESSENTIALS



### At a glance

**Regulatory compliance activities are the activities and tools that regulators use to deliver regulatory services or to achieve their outcomes.**

**Most regulators have a range of regulatory compliance activities they can use. Just like a craftsperson, the regulator chooses the activity or tool most likely to achieve the desired legislative purpose.**

Regulatory compliance activities include the following activities:

- **Entry and exit control:** some regulators have a closed loop regulatory system. They must make sure those who want to operate in the regulatory system meet the required entry standards. They also manage the exit from the system of those who wish to leave or no longer comply.
- **Educating:** where they help regulated parties understand their obligations, why they are important and how to meet them.
- **Inspecting and auditing:** where they check whether regulatory standards are being met.
- **Investigating:** where they follow a process of gathering and assessing information to find out what has happened and collect evidence to support their findings.
- **Conducting operations:** where they plan an intervention that targets resources to achieve a specific regulatory goal.
- **Intervening and enforcing:** taking action to make sure standards are being met by incentivising or directing behaviour or imposing a consequence for a breach of regulation.

### Why are a range regulatory compliance activities needed?

Many regulators use a responsive regulation model to help prioritise the regulatory activities and tools used to achieve compliance. A responsive regulation model recognises regulated parties have different circumstances and motivations, and respond differently to different tools.

### Choosing the right regulatory compliance activity

Regulatory organisations and people who carry out regulatory work need to know how to use the right regulatory activity or tool at the right time to achieve their desired outcomes.



## What are regulatory compliance activities?

Regulatory compliance activities are the activities and tools that regulators use to deliver regulatory services or to achieve their outcomes.

Most regulators have a range of regulatory activities and tools they can use. Just like a craftsperson, the regulator chooses the activity or tool most likely to achieve the desired legislative purpose.

### Service delivery

Many regulators have functions that inform, design and deliver regulatory services, and not all of them are compliance focused. Some regulators may have just one or two regulatory functions and not others. For example, not all regulators have a licensing function.

### Types of regulatory compliance activities

Regulatory compliance activities include the following:

- Entry and exit control
- Educating
- Inspecting and auditing
- Investigating
- Conducting operations
- Intervening and enforcing.

### Why are a range of regulatory compliance activities needed?

Many regulators use a responsive regulation model to help prioritise the regulatory activities and tools used to achieve compliance. A responsive regulation model recognises that regulated parties have different circumstances and motivations, and respond differently to different tools. Compliance plays a role in nearly all regulatory systems,

including those primarily focused on providing services or benefits.

Most people are willing to comply if they understand why it's important and what they need to do. Some will avoid complying because they think it's not in their best interests. However, they may comply if they're checked on, incentivised, directed to or if they believe they will be punished for non-compliance. A small percentage of people have no intention of complying with regulation or actively seek to avoid regulation. In these cases, regulators may need to enforce compliance by imposing penalties or other sanctions.

## Choosing the right regulatory compliance activity

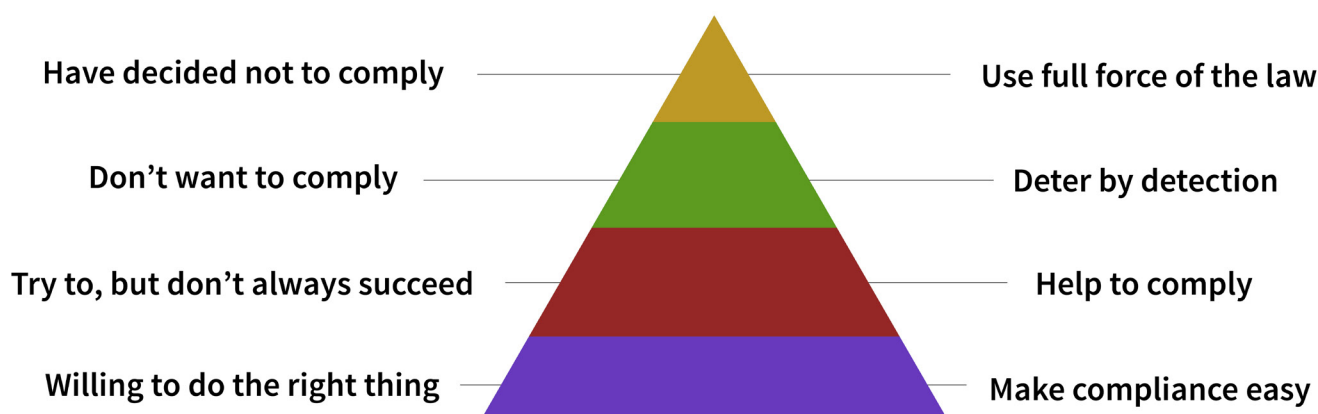
Regulatory organisations and people who carry out regulatory work need to know how to use the right regulatory activity or tool at the right time to achieve their desired outcomes.

Each activity or tool has a specific purpose. Regulators apply the activity or tool that will most likely achieve the desired effect.

While you may not perform all or even any of these activities in your role, you need to understand the full system, where you fit within it and how your work interacts with and impacts others. This will help you effectively contribute, collaborate and support regulatory work.

The Braithwaite model, shown on the next page, is just one of the concepts that regulators use to support their compliance work. You'll want to check out your own organisation's regulatory strategy and compliance and enforcement approach.

## Braithwaite pyramid



## Entry and exit controls

### What is entry and exit control?

Some regulators have a closed loop regulatory system. They must make sure those who want to operate in the regulatory system meet the required entry standards. They also manage the exit from the system of those who wish to leave or no longer comply.

### Why control entry and exit?

Some regulatory systems require people or businesses to meet certain standards or comply with certain requirements before they can participate. When this happens, regulators carry out entry and exit control. They put processes in place to help people enter and leave the system, and they control who is allowed to participate. For example, people wishing to sell alcohol must apply and be granted an alcohol license. They must comply with the Sale and Supply of Alcohol Act 2012 to maintain their license.

It's important to note that not all regulatory systems have entry and exit control processes. Not all regulatory systems are voluntary, and not all systems are 'closed systems' that require licensing or registration.

### Whats the benefit?

Entry and exit control help achieve regulatory outcomes such as safety and fairness. It prevents the harm that may occur if system participants are not willing or able to perform as required.

If regulators know who is participating in a system, it makes the job of monitoring and encouraging them to do the right thing much easier. Entry control gives assurance to regulators that the system participants are capable of complying.

### Entry control

Entry control is granting someone access to participate in a system. People carrying out entry control activities may process applications for licenses, permits and certificates, and maintain registers. They make decisions about whether someone should be allowed to participate in a regulatory system based on criteria set out in legislation and standards. They are important gatekeepers for the system and their decisions have a flow-on effect.

They need to manage the competing pressures of processing applications in a timely fashion and their duty to make considered and evidence-based decisions about each applicant's suitability.

## **Exit control**

Exit control ends access to participate in a system. Most of the time this happens because a person or business no longer wishes to participate. For example, a business owner may have sold or closed their business. The regulator puts processes in place to help them voluntarily withdraw. The person or business is then released from their duties and obligations.

If a system participant is no longer complying with the required standards or meeting their obligations, or has committed a breach, a regulator may temporarily suspend or permanently end their access.

## **Accurate information**

Entry and exit control is effective when the regulator is able to obtain and maintain accurate information about system participants. Not all regulatory systems allow for entry and exit control, and it is not always easy for regulators to know who is participating in a regulated activity.

Educating means helping people understand why their compliance is important, what their obligations are and what the consequences are if they don't comply. Regulators think about who they are educating, what they want them to know and do, and the best way to reach them and encourage them to do the right thing. Regulators use a variety of channels to educate. A key channel is the regulator's website. Other channels include public information campaigns, television advertising, call centres, fact sheets, industry forums, field day stalls, presentations, brown bag discussions, targeted operations and chats with people in the course of their work.

Regulators think about how to make it as easy as possible for people to comply (and hard not to comply). They must also maintain the legal integrity of the system and ensure that it is focused on achieving its regulatory outcomes. People carrying out regulatory work need to be clear when educating that they do not slip into giving advice. This includes giving legal advice, or labelling performance as 'good'; if they don't have a strong basis for making that judgement. Giving advice includes, promising an outcome (such as a favourable decision or approval), or fulfilling a person's obligations for them.

## **Educating**

### **What is educating?**

Educating is helping regulated parties understand their obligations, why they are important and how to meet them.

### **Why educate?**

Most people are willing to comply with standards and do the right thing if they know what's expected of them, why it's important and how to comply. That's why regulators educate.

## **Inspecting and auditing**

### **What is inspecting and auditing?**

Inspecting and auditing means checking whether regulatory standards are being met.

### **Why inspect and audit?**

Many people are willing to comply if they understand why this is important. Some, however, will not. Some people may be trying to do the right thing but need feedback if they are not meeting the required standards. Others will be more likely to

comply if they know that the regulator will check and take action if they don't comply. Regulators may have their own definitions of inspecting and auditing and often use these terms interchangeably. Both activities involve checking whether something or activity meets defined standards – whether these standards are set in legislation, specified by the regulator or defined by industry or the regulated party itself.

Some audits may be system focused. Some types of legislation require regulated parties to identify risks, put in place systems to deal with these and evaluate the systems to ensure they are performing as they should. The auditor checks that the regulated party is doing these things.

### **Standards and behaviours**

If your role involves inspecting or auditing, it's important that you are familiar with the standards that regulated parties are required to follow and their source. Not all regulatory systems have prescriptive standards to comply with – some are based on expected behaviours that regulated parties need to demonstrate. There might not be formal compliance inspections or audits in some systems, but a regulator might be able to investigate when an issue is discovered or when a complaint is made.

### **Target resources**

Regulators use their resources carefully. They know that most people willingly comply and that social incentives and norms encourage compliance, even by those who are reluctant. When inspecting and auditing, regulators usually give the most attention to areas of highest risk and known under performers. They may also carry out random compliance checks.

### **Build a picture**

The information that regulators collect as part of inspecting and auditing helps to build a picture of the regulated sector. This feeds into intelligence analysis, which in turn helps the regulator

predict future trends and potential issues. The results of inspecting and auditing may trigger other regulatory activities, such as educating or investigating.

## **Investigating**

### **What is investigating?**

Investigating is the process of gathering and assessing information to find out what has happened and collecting evidence to support their findings.

### **Why investigate?**

Regulators investigate when they need to find out what has happened and why. This may be to:

- help make a system safer by understanding why an accident or breach occurred
- prevent further harm from occurring
- enable a regulator to appropriately address non-compliance
- understand the impact or consequences of a breach and possible solutions.

An investigation, or the need to gather information, may be triggered by several things, including:

- a notification, complaint or issue raised – such as someone contacting the regulator about a possible compliance breach or noting an issue they are having
- an audit or inspection – which may reveal actual or suspected non-compliance
- an event such as an incident, accident, explosion or outbreak of a disease.
- information shared during an educational initiative.

## Uncover the facts

People carrying out investigations uncover the facts of a particular matter and ensure that this is clearly documented. They look at information, examine scenes, ask questions and collect evidence. They may analyse whether the evidence proves that a breach in legislation or other standards has occurred. The results may be used to support intervention and enforcement, or other regulatory activities, such as identifying opportunities for education or improved guidance.

## An open mind

Evidence can be used to determine if wrongdoing has occurred. However, investigators are careful to keep an open mind, and not predict the findings of the investigations as they carry it out.

## Conducting Operations

### What is an operation?

An operation is a planned intervention that targets resources to achieve a specific regulatory goal.

### Why conduct regulatory operations?

Sometimes regulators need to focus their efforts to tackle a specific problem or achieve a particular regulatory objective.

They may carry out a regulatory operation to:

- raise awareness or educate
- monitor compliance
- search for and seize evidence
- stop unlawful behaviour
- apprehend offenders.

These operations are often visible or reported in the media. When people notice what a regulator does, it gives the regulator the opportunity to educate the

wider public and/or engage their help in achieving important regulatory outcomes.

The term 'operation' originated from police work. Operations are sometimes given names to help everyone identify with the purpose of the operation. People involved in carrying out an operation may have set roles and tasks. They need to work as a team, be organised and communicate so that all parts of the operation work together to achieve its purpose.

## Multiple factors

Operations sometimes involve:

- several regulatory organisations working together to achieve multiple objectives
- several regulatory interventions being applied at the same time
- exercising powers from more than one source of legislative authority.

## Focused effort

Operations are an effective tool when the regulator needs to achieve a particular objective at a particular time, rather than on an ongoing basis. This dedicated effort creates momentum and impact. It may cause a shift in the behaviour of a regulated sector or send a strong message about the regulator's expectations or approach.

## Intervening and enforcing

### What is intervening and enforcing?

Intervening and enforcing means taking action to make sure standards are being met by incentivising or directing behaviour. It can also mean imposing a consequence for a breach of regulation. Regulators may choose to intervene to prevent harm, or maximise public benefit. Or they may choose to intervene to improve compliance, prevent a situation from getting worse or change behaviour.



## Why intervene and enforce?

Regulators need a range of tools to encourage or require someone to do the right thing, including consequences for when they don't. They apply these tools fairly and in proportion to the situation. When a regulator implements consequences for non-compliance, everyone in the system is encouraged to comply. The public see that they can trust the regulator to manage non-compliance. All those who have been compliant see that those who haven't are being justly dealt with, which encourages them to keep complying. Those who are not complying may rethink their position. Some interventions are set out in legislation. Regulators may also have discretion to develop non-legislative interventions, for example, an education campaign or a letter of expectations. Interventions can also be creative or unusual, for example, asking a car manufacturer to change the locks on a particular model of car so that it is harder to steal.

## What is enforcement?

Enforcement is a legal tool that regulators use to require someone to comply or issue a penalty or punishment when they don't. The legislation will set out the enforcement tools the regulators can use. Some regulators have a range of enforcement tools they can use and others have very few. These tools range in severity from warnings, suspensions or abatement notices through to very severe penalties, such as revocations, large fines and imprisonment.

## Process and models

Regulators usually have processes and models that help them choose which intervention or enforcement tool to use in a particular situation. Regulators enforce when they need to make people comply – especially when they are unwilling to do so. Regulators may also need to impose a penalty when someone's behaviour has caused significant harm. A regulator is unlikely to use an enforcement tool if someone is willing to comply but is not sure what they have to do. In these cases, it is usually more appropriate for a regulator to educate.

## Enforcement tools

Below is a sample of the many enforcement tools available to regulators. Each regulator has access to the enforcement tools that are set out in the legislation that it administers.

- **Prosecution:** brought before a court of law because they are alleged to have committed a crime.
- **Improvement notice:** directed to take certain actions or refrain from certain actions.
- **Compensation order:** pay money or provide a service to a victim because of the harm they have caused.
- **Fine or penalty:** pay money to the government because they have committed a crime or lesser offence.
- **Warning:** informed that actions/omissions appear to be non-compliant, and of possible consequence.
- **Suspension:** temporarily stopped from carrying out an activity that requires a licence or permission.
- **Infringement notice:** an 'on the spot' fine for an alleged offence or contravention of the law that can be paid instead of going to Court.
- **Non-disturbance notice:** requires someone to preserve a site while the regulator collects evidence.
- **Revocation:** revokes or cancels a licence, permanently removing someone from the regulatory system.
- **Prohibition notice:** a warning or direction to stop an activity that is occurring.
- **Product ban:** a defined product cannot be sold or used in Aotearoa NZ.
- **Forfeiture:** something such as an asset is lost or given up as a consequence of illegal activity.

## What you can do to learn more about Regulatory Compliance Activities

- Pick one thing from this module to learn more about. You might like to use the resources in the next section, check out what's available in your organisation, or do a bit of Googling.
- Have a chat with a colleague who carries out a regulatory activity that you'd like to learn more about. See if you can sit in on one or two of their team meetings.
- Consider the regulatory activities your organisation conducts. What's your part in this? With your team, consider one thing you could do to make things work better.

## Resources

[↗ MBIE's Tenancy Compliance and Investigations Team \(YouTube\) \(16 mins\)](#)

[↗ The Paul and Henry Show, Episode 5, Compliance Response Framework Interventions \(YouTube\) \(20 mins\)](#)

[↗ The Paul and Henry Show, Episode 6, Planning Investigations \(YouTube\) \(25 mins\)](#)

[↗ The Paul and Henry Show, Episode 7, The Importance of Judgement – Entry Control \(YouTube\) \(18 mins\)](#)

[↗ Charities Services, Compliance Approach](#)

[↗ Civil Aviation Authority's, Regulatory Strategy](#)

We also suggest that you locate and read your organisation's compliance approach, intervention decision guide or enforcement guidelines.

## Got questions? Get in touch

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