

Common regulatory issues

In a perfect world, we wouldn't need regulation because everyone would behave in a manner where laws wouldn't need to be made and enforced. Unfortunately, we do not live in a perfect world: which also means that regulation is not perfect either.

People are not perfect

In a strict legal sense, regulation typically occurs between a regulatory body (like a Local / State / Federal Government agency) and a corporation. However, in a practical sense, this always boils down to interactions between individuals.

People are not perfect. They sometimes make mistakes, don't fully understand the issues, leap to unsound conclusions or fail to communicate clearly. People also have biases and prejudices, allow their emotions to get the better of them and sometimes, there is just a simple clash of personalities.

Regardless of the reason, when a regulatory issue becomes more about the people involved than the problem itself, the outcome is never going to be a good one.

Focusing at the wrong end of the problem(s)

Regulators sometimes feel they are "spinning their wheels." They action lots of breaches, yet non-compliance rates steadily increase.

This is often an indicator that the regulatory efforts are dealing only with the outcomes of non-compliant behaviour and not the root causes. Successfully addressing the root causes of a compliance issue can reduce, even in some cases eliminate, the need to deal with non-compliant outcomes.

This approach can also help in avoiding catastrophic outcomes. Strings of smaller incidents are often a symptom of a much more serious issue that needs to be addressed to avoid a disaster.

Dependency on revenue from regulation

As discussed in a separate information sheet ("What is Regulation?") the purpose of any regulation is to change behaviour. One of the tools available to regulators to effect behaviour change is fines and penalties for infringements or offences.

However, when an organisation includes revenue from fines and penalties in forward budgets, a de facto quota is created for regulatory officers to meet. This can create a tunnel vision for regulators, whereby they are expected to identify more offenders and use fines and penalties as their primary regulatory tool.

In these situations, programs to educate and discourage the offending behaviour often fall by the wayside. This is because, looking through the black and white lens of economics, such programs present a double-edged sword: they often provide no economic return and threaten the income stream locked into a budget centred around fines and penalties.

Regulatory capture

This occurs when a regulator ends up advancing the commercial or political interests of an industry instead of acting in the public interest. This can either be a result of corruption or influence exerted on the regulator.

This is the most serious type of regulatory issue as, in its worst form, it can put lives at risk. For example, regulatory capture was cited as the main reason why the Japanese Nuclear and Industrial Safety Agency (NISA) approved a 10-year extension for the oldest of the six reactors at Fukushima Daiichi... just one month before an earthquake and subsequent tsunami damaged this reactor and caused a meltdown in 2011. This required the evacuation of over 150,000 people and a massive clean-up of radioactive soil and groundwater.

Who can I talk to if I'm dealing with these issues?

Get in touch with JS Regulatory Services. We love making regulation work best, for everyone.



Phone: 02 6188 7700

Email: mail@jsrs.com.au

www.jsrs.com.au