

Minimising Harm - Maximising Benefit

TE TARI TAIWHENUA

The Department of Internal Affairs' Approach to Compliance & Enforcement 2012

gambling

money-laundering & terrorism

censorship

**private security personnel
& private investigators**

spam



INTERNAL AFFAIRS



Te Tari Taiwhenua

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Foreword: Minister of Internal Affairs

The Department of Internal Affairs delivers regulatory services in important areas such as censorship, gambling, anti-money laundering, unsolicited electronic messages, and the private security personnel industry.

I am pleased to see the Chief Executive and his Department taking a thoughtful and open approach to improving the Department's regulatory services.

The result will be increased and sustained levels of legal compliance. At the same time it will reduce the compliance burden faced by regulated parties.

This will contribute to one of the Government's key priorities: to deliver better public services for the benefit of all New Zealanders.

I am backing the Department to achieve better results and lift compliance through smarter regulation. This will help us to build a safe, prosperous and respected nation.



A handwritten signature in blue ink that reads "Chris Tremain". The signature is stylized and written in a cursive-like font.

**Hon Chris Tremain
Minister of Internal Affairs**

Introduction from the Chief Executive

The Department of Internal Affairs regulates a wide range of activities including gambling, censorship, anti-money laundering, unsolicited electronic messages (spam), and private security work.

The regulated areas are diverse but, like the flax in our logo, the strands can be woven to give strength and meaning. This statement outlines our approach to that regulatory compliance work.

The best compliance model is to make it easy for people who want to comply; to help people who are trying to comply; and to use the full force of the law on people who refuse to comply.

We regulate to meet the requirements of the law and to minimise harm and maximise benefit. New Zealanders benefit from entertainment, money for community activities, financial services and electronic connection between businesses and customers. But these activities also have the potential for harm such as problem gambling or perpetuating child abuse through the demand for objectionable material.

In today's tight fiscal environment, government agencies must work hard and work together to deliver within existing budgets. Given that we do not have unlimited resources, we must focus our efforts where we can have maximum impact. This document describes how we go about analysing the sectors we work with and how we use this analysis to prioritise and target our efforts based on risk.



It is important for us to be clear and open to provide the people we regulate with greater certainty and understanding about our approach. Being clear and open encourages trust: Trust we will support those who are trying to comply with the law and trust we will deter those who are not trying to comply. This trust allows us to work together with people for compliance and better outcomes. Ultimately, this regulatory work helps Internal Affairs to contribute to a safer, more prosperous and respected nation.

A handwritten signature in blue ink, appearing to read 'Colin MacDonald', written in a cursive style.

Colin MacDonald
Secretary and Chief Executive
Department of Internal Affairs

What we are trying to achieve

Through our regulatory activity, we minimise harmful, social, economic, and criminal behaviours and contribute to a safe and prosperous nation. We can achieve this by promoting compliance that minimises harm and maximises benefit.

Minimising harm

Censorship

We are concerned about the harmful effect objectionable and restricted material can have on the community - especially families, children, and young people.

We are particularly concerned about the link between the demand for child/youth abuse content and the actual sexual or physical abuse of children and young people.

We work with local and international organisations and agencies to identify and stop abusers, and identify and help victims.

Gambling

We are concerned about the harm that gambling can have on people, their families, and their communities. We are particularly concerned about problem gambling and the disproportionate negative impact it can have on vulnerable people and communities.

Studies indicate that most people gamble without negative effects. However, problem gambling can result in the loss of wealth, health and well-being and this impact can extend beyond gamblers to include others. It may even lead some to commit crimes or to neglect important responsibilities.

We are concerned about the potential for criminals manipulating gambling to support their illicit activities. Stopping criminals from exploiting the gambling sector is an important way we can make our communities safer.

Spam

We are concerned about the burden unsolicited commercial messages can have on New Zealand's Internet users and systems, and the link between unsolicited messages with deception, fraud and the propagation of harmful computer viruses and malware.

To gain a partnership with international regulators, we must play an active part in international efforts to combat this activity.

Anti-money laundering

We are concerned about criminals and terrorists abusing New Zealand's financial system to hide or move money, so that they can sustain or profit from their harmful activities.

We are concerned about the adverse impact on New Zealand's reputation if our financial system is easy for criminals and terrorists to exploit.

Private security personnel & private investigators

We carry out investigations and participate in hearings relating to the licensing of private security personnel and private investigators.

It is important that people working in these industries can be trusted by those businesses and the public who need to rely on them. Unlicensed, untrained entities can endanger people and businesses.

Censorship

We want people to be well-informed and to have a reliable means of choosing age-appropriate films, videos and publications, including those available through the Internet and other forms of electronic entertainment.

We want to support local content producers and distributors to produce and distribute content without unnecessarily burdensome or costly compliance frameworks.

We support the information and communication sector to manage the challenges of objectionable and restricted publications effectively.

Gambling

We support the gambling industry to enable the public to enjoy gambling as a safe and responsible form of entertainment.

We want to make it easy for community groups to continue to use traditional forms of smaller-scale gambling, such as raffles and Housie, in a safe and responsible manner.

We continue to work with the community and the Class 4 gambling industry to ensure that maximum net proceeds are returned to genuine and diverse community needs.

A well-regulated and responsible gambling industry can contribute to New Zealand's economy through employment, tourism and a vibrant, diverse community sector.

Spam

The Internet is a great way of doing business and for staying in touch via social networks. We want people and businesses to use the Internet for commerce and social connections in a way that promotes a safe and secure environment.

We want customers to engage with businesses they choose without being overwhelmed by unsolicited and potentially harmful messages.

We support the information and communication sector to effectively manage the challenges of unsolicited commercial electronic messages.

Anti-money laundering

New Zealanders need a financial sector that is trustworthy, operates with integrity and keeps criminals out.

There is a global benefit in preventing local and international criminals and terrorists from exploiting the New Zealand finance sector to fund criminal terrorist acts.

Private security personnel & private investigators

Trained, licensed private security personnel help New Zealanders to be safer at work and in their homes, and to participate in social and recreational events.

Our compliance & prioritisation models

We expect everyone to comply with the law. Based on international research, we believe most individuals and organisations are willing to comply.

We acknowledge that barriers such as a lack of awareness or understanding may prevent some people from becoming compliant or maintaining compliance.

Some will comply reluctantly only because there is a credible risk that an enforcement agency will detect their non-compliance and it will result in serious consequences.

Some people will not comply at all.

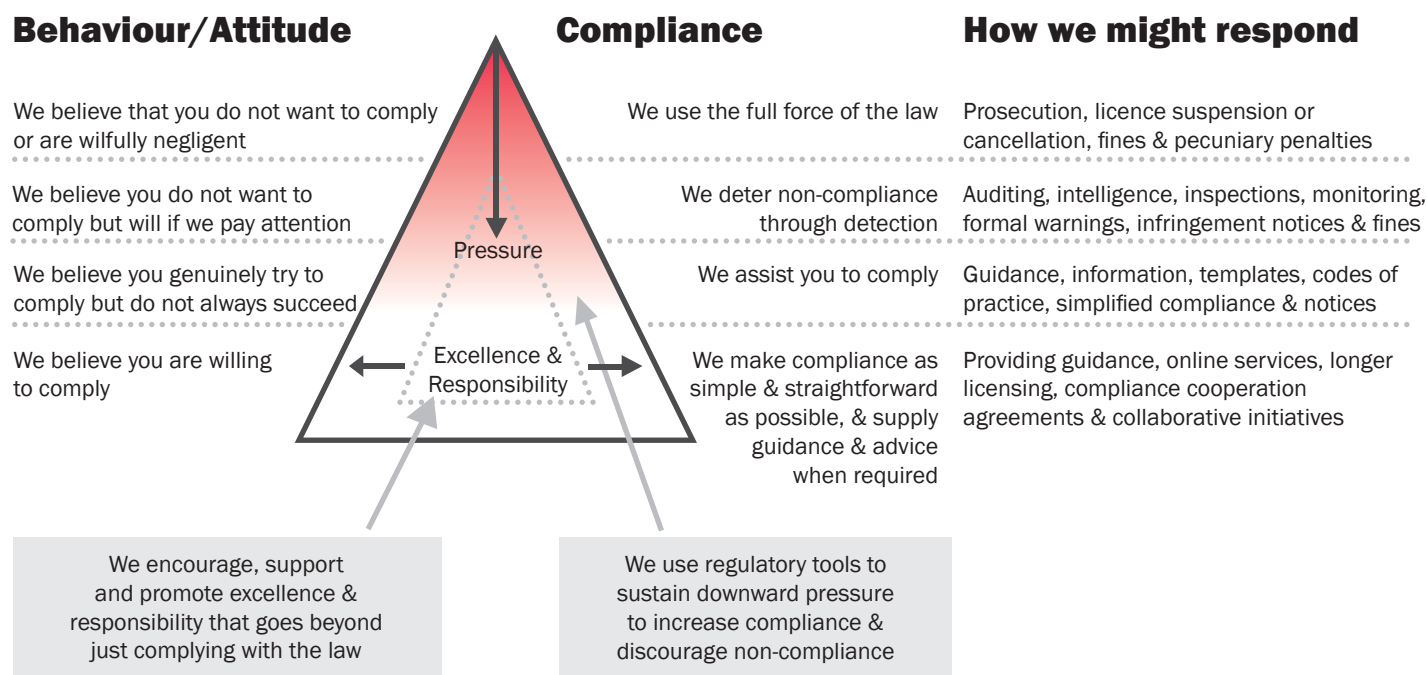
The precise proportions of people who are willing to comply may vary between sectors and over time.

It is important for us to monitor our regulated sectors continually. This enables us to dynamically focus and adapt our efforts, and have the greatest impact on levels of voluntary, sustained compliance. It also enables us to promote our broader social outcomes.

Our job is to identify and focus our regulatory efforts on removing barriers to full and sustained compliance.

This means that the approach we take to compliant individuals or organisations will differ from the solutions we choose for those who are wilfully negligent or deliberately non-compliant.

Model 1



Model adapted from the OECD

We are interested in reducing harm and maximising benefits.

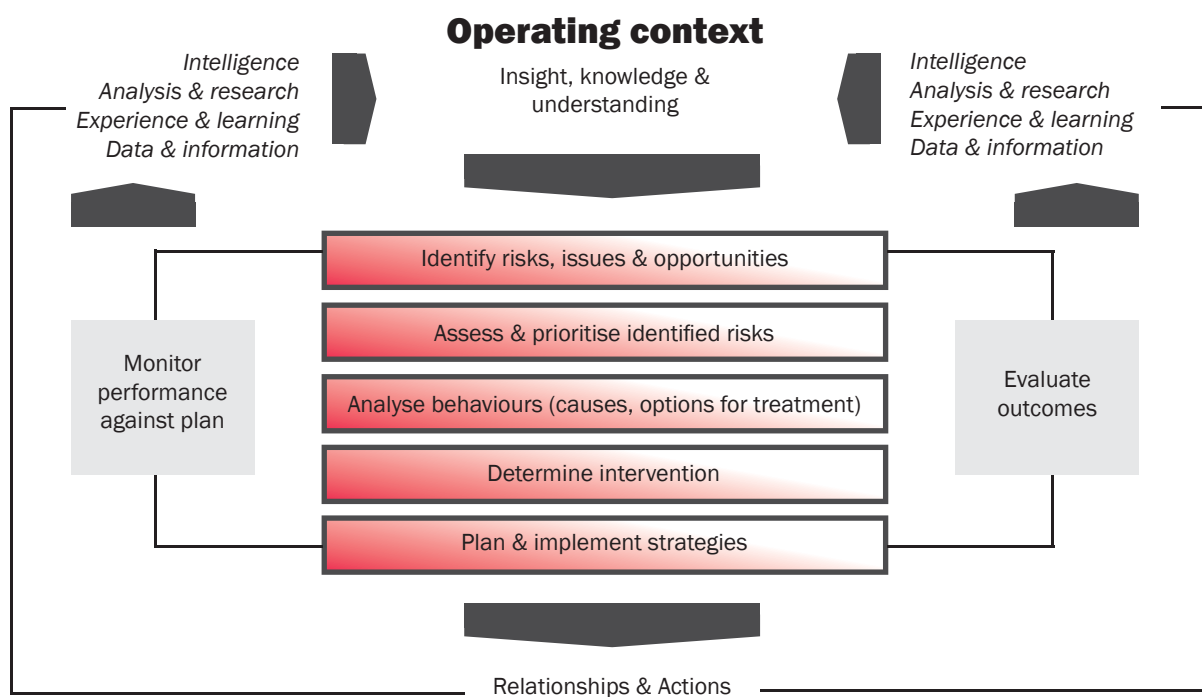
This means that, as well as focusing on compliance, we promote examples of excellence and highlight areas where non-compliance or negligence is creating harm or has the potential to create harm.

We focus our efforts carefully and deliberately.

This means we use our insight, knowledge and understanding to identify risks, and determine interventions to most effectively deal with those issues.

We have a range of regulatory tools available. While we are fully prepared to escalate our response with enforcement action, we are equally prepared to work with regulated parties when appropriate.

Model 2



Model adapted from the OECD

Our approach to compliance & enforcement

Our principled approach

Outcomes focused

Our compliance work and enforcement is heavily influenced by a desire to have maximum impact on delivering our outcomes.

We want people to comply with the law in a way that best delivers the outcomes we are interested in achieving.

Fairness

We are fair and reasonable. Our people act with the highest level of integrity and in accordance with the Department's and public sector's codes of conduct.

Being fair means giving people affected by our enforcement and compliance work opportunities to contribute to our thinking and decision-making processes.



It means our responses are fair, reasonable, unbiased and made in accordance with the principles of good administrative practice and natural justice.

We are interested in using our regulatory activities to ensure that the sectors we regulate operate fairly and that there is a level-playing field for all participants.

Consistency

We are consistent. This means we take similar approaches in similar circumstances. It does not mean uniformity. Each case and set of circumstances is unique and must be handled as such.

We may pursue some non-compliance more vigorously than other superficially similar cases; some breaches may receive firmer sanctions than other similar offending.

The key is that our approach and decision-making is consistent and responsive.

Public expectations

Our response to non-compliance, while consistent and fair, may be informed by the public's expectations for firm action.

The public expects that offending that adversely affects or has the potential to adversely affect vulnerable individuals, such as children and problem gamblers, to be dealt with in a firm way.

Transparency & openness

We are clear about our approach to compliance and enforcement and how we make our decisions.

Those affected by our decisions have opportunities to ask questions and to seek review.

We will analyse, identify risks, & use intelligence to target effort

Most people willingly comply with legal requirements if they are well-informed and supported to comply. We sustain this compliance but also focus our regulatory efforts on those parties we have reason to believe are unwilling to comply or are willfully negligent. We use risk and intelligence analyses and our own knowledge and expertise to target and prioritise efforts and interventions on the areas of greatest harm, or where we believe we can have the strongest effect on maximising compliance.



Goal focused

Our primary interest is obtaining long-term sustainable compliance. This does not mean we will not take action against serious breaches. We are likely to take firmer action against non-compliance that we consider is deliberate, deceptive or negligent. Breaches that create or have the potential to create harm, or involve criminal behaviour, or where they adversely affect the interests of people or communities, are more likely to attract more serious action.

Simplifying compliance

We make compliance as straightforward and simple as possible in the circumstances. We are clear about our expectations.

We are committed to continuously improving our systems and working with the regulated community to reduce the cost and burden of compliance that has been created by unnecessarily complex or demanding requirements and processes.

We provide the tools and guidance necessary to support compliance.

Supporting responsibility & excellence

We support organisations that take on greater responsibility for positive community outcomes and that are striving for excellence by spreading information about good practice, supporting responsible initiatives and actions, and recognising excellence.

We support individuals and organisations needing help to comply. We provide a lot of information and guidance and make compliance as simple as possible. We tolerate unintentional errors and mistakes. We understand mistakes happen and can help rectify them when they are brought to our attention openly and early.

Trust & confidence

The public and our local and international stakeholders can trust and have confidence in our work because we are recognised as an effective, competent and principled modern regulator. We use a full range of regulatory/enforcement tools in a smart and focused way to obtain compliance and achieve positive community/public outcomes.



We can help

We support compliance by:

- engaging with regulated parties and other stakeholders
- providing guidance and support
- minimising the compliance burden
- connecting regulated parties with their communities
- encouraging and supporting disclosure of unintentional non-compliance.

Our regulatory toolbox

We use a range of regulatory tools to do our job across censorship, gambling, anti-money laundering, unsolicited electronic messages, and the private security personnel industry. We use different tools and combinations of tools to achieve our outcomes in these areas.

Some of our tools are proactive and help avoid non-compliance and harm, and others respond to non-compliance and areas of concern. Our choice of tool or combination of tools is influenced by informed assessments of how we can best minimise harm and maximise benefit and promote sustained compliance.

This is not a full list of all of the ways through which we manage compliance but it provides a good overview of the breadth of tools we have available to fulfil our regulatory obligations and attain our outcomes.

Our tools

Choosing an adequate & appropriate enforcement option

The laws we regulate generally provide us with a range of sanctions or enforcement options for responding to non-compliance. These range from issuing notices and infringement fees through to prosecution resulting in significant fines or prison sentences.

We will use the enforcement option we consider necessary and appropriate to achieve sustained compliance and deter further non-compliance. This does not mean we will choose a low tariff enforcement option.

We are guided by factors such as a regulated party's history of compliance and degree of openness and preparedness to cooperate with us, as well as our principled approach.

Auditing & inspecting compliance

We have powers to conduct announced and unannounced inspections to check on-site compliance. We can also conduct more in-depth audits to determine compliance.

Investigations

We can investigate alleged breaches of the law. These investigations will usually be undertaken in response to non-compliance that we consider to be serious or significant.

Cancelling, amending, suspending or refusing renewals of licences

As a licensing authority in gambling, we have the ability to cancel, amend or suspend gambling licences where we believe:

- the grounds for being licensed are no longer met
- the licence holder is failing (or has failed) to comply with the Act
- a venue agreement is no longer consistent with the Act
- false or misleading information has been provided.



Suspensions can be up to six months' duration.

As the Complaints, Investigation and Prosecution Unit for the Private Security Personnel and Private Investigator Act, we also support the Licensing Authority's work.

Walking the talk: Case studies

Responding to non-compliance for improved compliance & better outcomes

We aim to achieve improved levels of compliance and better outcomes to ensure accountability where the law has been broken. This responsiveness is demonstrated by our handling of two cases of non-compliance in the Class 4 ('pokie machine') gambling sector.

Both cases were serious enough to justify cancelling the gambling operators' licences. However, we cancelled only one of the licences and permitted the other gambling operator to continue to operate. The reason for the different responses is due to our outcome-focused, risk-based approach to enforcement and compliance.

In the first case, the nature of the non-compliance was deliberate, systemic, serious, and called into question the integrity of those involved as operators. In the second case, we allowed a licensee to continue to operate despite serious non-compliance. Through the course of our audit, it was clear that the operator had made significant steps to becoming compliant, and had already increased monetary return to the community. The operator also acknowledged its wrongdoing and was committed to lifting its performance beyond the minimum requirements of the law to become a good-practice operator.

We accepted this commitment, which included specific agreements to better target community need by improving its funding practices and trimming its costs in order to continue returning a higher percentage of gambling revenue to the community. The operator agreed to drop its expensive, time-consuming legal wrangling and instead work constructively with us. Notwithstanding the positive outcome, we were careful to hold this second gambling operator appropriately to account for its serious wrongdoing. We imposed a 16-day suspension on the operator. This was the most severe suspension ever imposed and affected over 21 gambling venues.

These two cases show that there is no single response to non-compliance and that the overall objective is to improve compliance, deliver better outcomes, and hold people to account appropriately for their wrongdoing.

Supporting understanding & compliance

We want to support regulated parties to understand and comply with their legal obligations. A good recent example of this is our approach to establishing a new reporting framework focused on money laundering and countering the financing of terrorism.

The Anti-Money Laundering & Countering Financing of Terrorism Act 2009 comes into full effect in 2013. As one of three supervisory agencies, we are responsible for overseeing a broad range of entities such as casinos, non-deposit taking lenders, moneychangers and other businesses not overseen by the other supervisory agencies (the Reserve Bank and the Financial Markets Authority).

This is a new law and many of the entities who will need to start reporting to us are inexperienced in reporting financial transactions to a regulator. Because of this, we are focusing initially on making compliance as easy as possible, raising awareness and understanding of the new reporting requirements, and providing support and guidance. This includes undertaking a national road show, producing written guidance material, and focusing information and guidance at particular groups.

We anticipate that some reporting entities will struggle initially to comply fully with the new reporting and other regulatory requirements. We will be reasonable in these circumstances and will continue our efforts to help them to comply.

However, as the legislation beds in, we expect regulated parties to become more aware of their legal obligations and to comply with the law. Therefore, we will become increasingly less tolerant of non-compliance and will take firmer action against non-compliance.

None of this is to suggest that we will not respond firmly to serious, deliberate, or harmful non-compliance or criminal behaviour. We will work with other agencies in New Zealand and overseas to identify criminal offenders and will take strong and immediate enforcement action.

Providing information, guidance & support to regulated parties

It is important for regulated parties to have good quality information and guidance on the requirements of the law and how they might comply.



The Department produces this type of material and supports others to produce material. Guidance material can take many forms including website information, FAQs, conferences, presentations, forums, alerts, newsletters, posters, standards, and codes of practice.

Simplifying compliance & promoting self-management

We want regulated parties to take responsibility for ensuring their own regulatory compliance. We make our systems and processes straightforward and effective to support this.

Encouraging early & open disclosure of errors or mistakes

Mistakes and errors happen. We are more sympathetic when genuine mistakes or errors are voluntarily disclosed to us early. When we find out about problems we are likely to offer help and assistance to individuals and organisations that have made open and early disclosures.

We are more likely to take firmer enforcement action against mistakes or errors where there has been a deliberate effort to hide the error or mistake from us.

This does not mean we turn a blind eye to breaches of the law—particularly if an error or mistake is significant or harmful. We have formal policies in place for guiding leniency and disclosures.

Actively preventing unlawful behaviour

We have a range of systems aimed at preventing unlawful behaviour. For example, we have implemented a system for electronically monitoring gaming machines to help prevent fraud and theft.

We work with Internet Service Providers to help prevent access to objectionable material involving the sexual abuse of children and young people, and to help stem the flow of unsolicited messages (spam).

We use sophisticated technology and work collaboratively with other agencies to identify and stop people involved in the abuse and exploitation of children and young people.

Working collaboratively on issues of harm & benefit

We play an active role in pursuing solutions and initiatives aimed at minimising harm and maximising benefit. We work collaboratively with a range of organisations and individuals to develop solutions.



Collaboration can take the form of active participation, such as the multi-venue exclusion order initiative that helps people with gambling problems to manage their addiction effectively.

In other cases, we may provide data or information for further study or we may launch our own initiatives.

Walking the talk: Case studies

Working with others to achieve good regulatory outcomes

Collaborating with others is an effective strategy for us to achieve our regulatory outcomes of maximising benefit and minimising harm. For example, we used effective collaboration to achieve results in the challenging world of the Internet.

The Internet provides many benefits. It is a great resource for doing business, managing your personal life, and providing entertainment. It also has the potential to be an unsafe place and, unchecked, has the potential to stimulate and sustain demand for serious harms such as the sexual abuse of children.

Under New Zealand law, no one has a right to go online to access or trade content about the sexual abuse of children. This is not just a technical legal question. It poses a serious social and regulatory problem. Online trading of unlawful content can create a demand for content that leads directly to the sexual abuse of children. We use a range of regulatory tools including effective collaboration with industry, community and other enforcement agencies.

This collaborative approach helped us to develop and implement a highly successful online filter, which blocks New Zealanders from being able to access unlawful websites known to offer objectionable content involving children. Through this careful and collaborative approach, the filter's operation does not disrupt lawful Internet activity.

We collaborate with other local and international enforcement and child welfare agencies to identify offenders and victims. Operation Laminar, which targeted offenders using social networks to share objectionable content, is a recent good example where international collaboration works. This operation resulted in 55 offenders being caught around the world and 12 victims of child abuse were identified.

Making it easier to catch spammers

As a regulator, we encourage others to help us ensure that New Zealand's laws are upheld. This can involve support from regulated parties and other agencies but it can also involve community input. A good recent example of where we are encouraging community input into our work is an initiative to prevent unsolicited commercial electronic messages (spam).

Texting is a great way for people and businesses to stay in touch with each other. However, as mobile devices have become more common and smarter, so too has spamming. We investigate and take enforcement action against people and companies in breach of the Unsolicited Electronic Messages Act 2007. To take action, however, we need to know about the unsolicited electronic messaging.

To make it easier for users to complain about unsolicited electronic messages, we worked with mobile service providers to set up a new .mobi website for people to complain about spam more easily via phones or other mobile devices. Under this service, people can easily forward offending messages free of charge to our short code (7726), and provide more information on the .mobi website (<https://7726.govt.nz>).

The strength of this approach is that it helps us to increase our surveillance of unsolicited electronic messaging by drawing on the collective power of users. It also helps empower users to initiate regulatory action more directly against spammers.

Actively monitoring & detecting non-compliance & threats

We monitor our regulated sectors and international developments to detect non-compliance, potential opportunities for promoting compliance and other emerging threats/trends. We use this information to inform our planning and to effectively target and focus our efforts.

Publicising actions

We may choose to publicise enforcement action that we are taking or have taken to promote greater understanding of the consequences of non-compliance and to deter individuals and organisations from engaging in non-compliant activity.



Learning as we go

In addition to our intelligence and monitoring functions, we use our experiences to help inform our future work. We systematically review and learn from our actions in order to identify what worked and where we might make changes. We build and understand evolving case law.

Raising public awareness

It is in our interest as a regulator to ensure the public and consumers know their rights and know what to expect when dealing with a particular sector. This makes it easier for them to know when they are exposed to non-compliance or unlawful actions.

We help the public to protect themselves from potential harms. From time-to-time, we publicly disclose our assessments of the state of compliance in regulated sectors.

Actively supporting complaints & feedback

A well-informed public can be an effective source of information about non-compliance through the complaints they make when things go wrong.

The public need to have clear expectations of the sector—that is why raising awareness of compliance is an important part of our overall strategy.

To encourage this, we maintain effective and easy-to-use complaints systems as well as other feedback mechanisms to help inform our work.

Recognising excellence & responsibility

We recognise excellence and responsibility particularly where it contributes effectively to better levels of compliance and helps achieve our outcomes of minimising harm and maximising benefit. We raise awareness of good practices that we believe could be adopted more widely within the sector.

Focusing on suitable people

An important part of proactively preventing non-compliant or unlawful behaviour is to ensure that suitable people are involved in regulated activities.

In gambling we have a role in licensing individuals. Through this licensing role we try to keep unsuitable people from becoming involved in gambling.

We support the private security personnel and private investigators Licensing Authority to ensure suitable people are licensed.

Collaborating with other regulators

We maintain active links with other international and local regulatory and law enforcement agencies. This collaboration involves sharing information and intelligence as well as participating in coordinated operations.

Enforceable undertakings

In some of our regulatory roles, we have the ability to accept enforceable undertakings from regulated parties. These written agreements are generally available as alternatives to us pursuing enforcement action.

Where these are permitted in law, these agreements are enforceable and we may ask a court to order compliance or direct compensation as a remedy for the breach.

Seeking injunctions

In some of our regulatory roles, we have the ability to seek a court injunction to require a person to undertake something they have refused or previously failed to do.

In certain situations we may seek a court injunction to require someone to stop doing something which they have previously refused to do.

Technology development

We develop software capabilities aimed at supporting our regulatory efforts such as the Integrated Gambling Platform, Electronic Monitoring System for Class 4 gaming machines, and Internet filtering.



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New Zealand Government