WHSQ ESC Our Regulatory Approach

Our Regulatory Approach establishes the overall framework applied by Workplace Health and Safety Queensland (WHSQ) and the Electrical Safety Office (ESO) to influence the compliance behaviour of individuals and businesses with duties under Queensland's work health and electrical safety laws. This continues the strong focus on enforcing compliance established in response to the 2017 Best Practice Review of Workplace Health and Safety Queensland and implemented through the 2018 Compliance Monitoring and Enforcement Policy. Extending on this, Our Regulatory Approach explains how WHSQ and ESO use regulatory education, guidance, compliance monitoring, and enforcement strategies to ensure all duty holders comply with their legislative obligations, and the underlying principles and values behind these requirements.

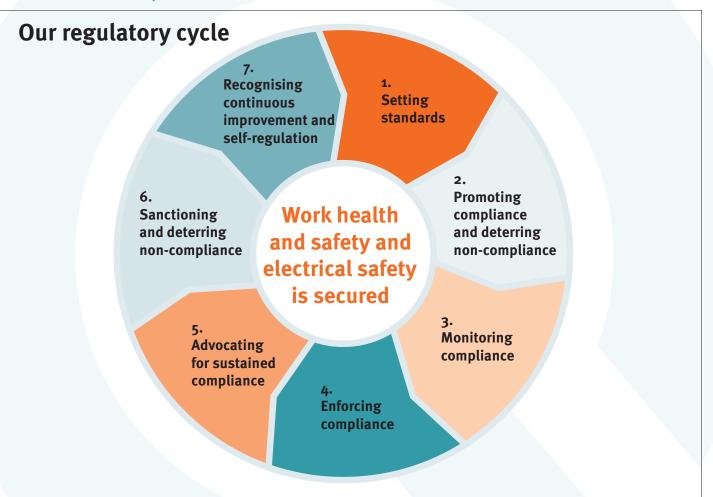


About WHSQ and ESO

WHSQ and ESO are regulatory agencies within the Office of Industrial Relations (OIR) responsible for providing effective regulatory services for healthy, fair, safe and productive Queensland workplaces and communities. We have a legislated mandate through the Work Health and Safety Act 2011, Safety in Recreational Water Activities Act 2011, and Electrical Safety Act 2002 to:

- secure the health and safety of workers and others against harm from workplaces
- ensure the health and safety of persons participating in recreational water activities provided by a person conducting a business or undertaking
- prevent persons being killed or injured by electricity, and
- prevent electricity becoming the cause of property damage or destruction.

Our mandate is supported through a continuous cycle to secure work health and safety, and electrical safety.



Setting standards

- Identifying and analysing issues and trends.
- Establishing minimum standards through national and state legislation, codes of practice, standards and industry guidance.
- Monitoring and review to ensure policies operate as intended and are balanced across business size and sectors.

2. Promoting compliance and deterring noncompliance

- Providing advice, education and information to help duty holders understand risk and voluntarily comply (e.g. online resources, technical assistance).
- Explaining our approach so duty holders know what to expect (e.g. workplace inspections, audits, penalties and fines).
- Applying both a human and business lens to WHS and ES.

3. Monitoring compliance

 Checking duty holder compliance through a range of activities (e.g. research, reviews, workplace inspections, audits, responding to incident notifications and complaints, stakeholder engagement and expert advice).

4. Enforcing compliance

 Using enforcement tools and partnering with agencies to enforce compliance and address entrenched issues (e.g. notices, inspector and regulatory powers, PCBU and officer duties, regulatory partnerships with other agencies, Health and Safety Representatives and other worker representatives, co-agency investigations and enforcement).

5. Advocating for sustained compliance

- Addressing behaviours, attitudes, cultures, and situational factors that lead to non-compliance, to encourage long-term behaviour change and commitment to the principles and values behind our legislation.
- Developing and applying deterrence strategies for noncompliance.

6. Sanctioning and deterring non-compliance

 Applying more coercive or punitive sanctions based on the seriousness of the risk or exposure to harm and to discourage reoffending (e.g. on-the-spot fines, prosecutions).

Recognising continuous improvement and self-regulation

- Acknowledging those doing more than just the minimum standard (e.g. recognition, awards).
- Partnering with industry and community to promote the benefits of health and safety culture and leadership.

Our range of services and initiatives is supported by a network of policy, advisory, compliance, enforcement and specialist technical expertise and a strong geographic presence with offices dispersed across the state. This enables the delivery of targeted, flexible and professional services to the spread of industries, workplaces and communities in Queensland.



Designing our regulatory approach

Our regulatory approach is designed to help us plan our work to deliver public value to meet stakeholder and community expectations¹. It is informed by legislation, Queensland Government policy, regulatory literature, analysis of harms in workplace statistics, developments in the nature of work undertaken in Queensland and coronial and judicial reviews and recommendations and other reviews such as the 2017 Best Practice Review of Workplace Health and Safety Queensland (BPR). It complements the OIR Strategy 2021-24, Five Year Strategic Plan for WHS in Queensland 2019-2023 and Electrical Safety Plan for Queensland 2018-2022 by clarifying the approach we apply to successfully tackle the many challenges we face to maintain and improve work health and safety, and electrical safety, in Queensland.

Our approach supports the aim of upholding and influencing the direction of the national agenda and continual improvement efforts in the underpinning Australian WHS framework and national model WHS legislation. Many businesses operate across national or international borders and consistency is essential to driving and sustaining long-term change. As a Safe Work Australia member, we influence the national framework and align to the Australian Work Health and Safety Strategy. Our enforcement activities appropriately apply the seven nationally agreed principles in the National Compliance and Enforcement Policy: consistency, constructiveness, transparency, accountability, proportionality, responsiveness and targeted.

Our regulatory approach reflects our commitment to **becoming a leader in our portfolio** by benchmarking against best practice regulatory literature and best performing regulators around the world². We engage in research, evaluation, partnerships and collaborations, industry and community engagement, tripartite consultative arrangements and comparative regulatory framework and performance reporting³, and regularly liaise with other Regulators.

We recognise that while inspectors will always have a key compliance monitoring and enforcement role adhering to the *Compliance Monitoring and Enforcement Policy 2018*, our approach goes beyond this, using all regulatory tools and avenues to effect behaviour change in duty holders and instill improved and self-sustaining compliance outcomes. We do this by focusing on risk prevention outcomes (e.g. reduction in injuries, illnesses and damage to property) with strategies that make greater use of systematic methods and consultative approaches to achieve the substantive compliance goal of ensuring the health and safety of workers and others, rather than simply compliance with rules.

¹ Moore, M. (1995) Creating Public Value; Strategic management in government.

² E.g. other Australian and New Zealand WHS regulators, and overseas regulators such as the UK Health and Safety Executive, European WHS regulators and north American WHS regulators.

³ E.g. Queensland Regulator Performance Framework Reporting, National comparative performance reporting

Our approach seeks to build trust with our stakeholders and broader community by being mindful of their work, health and electrical safety needs whilst delivering our services with transparency, accountability and integrity, and demonstrating values of consistency, procedural fairness and proportionality.

We achieve this by:



 engaging with business and worker representatives from industry and the community to access local intelligence on emerging and entrenched WHS and ES issues, consulting with Minister-appointed advisory boards and committees (such as the Work Health and Safety Board and Electrical Safety Board and their subcommittees) and establishing stakeholder-based expert reference groups for specific issues



 adopting an evidence-based approach and horizon scanning for traditional, present-day and emerging risks



 focusing on and developing our internal capability to deliver our regulatory services.

Our regulatory approach: A blend of theory and practice

Our approach combines contemporary regulatory theory with established practice and experience-based practical insights to address rapidly changing risks, organisational structures, work practices and work environments. The approach broadly follows the Strategic Enforcement model⁴ combined with emphasis on risk-based⁵ and responsive regulatory practices⁶ to effectively influence compliance outcomes⁷. It also reinforces existing regulator policy such as the *Queensland Compliance Monitoring and Enforcement Policy 2018*.

Enacted in

- Regulator Performance Framework Reporting
- Regulatory strategy and research initiatives
- Internal review and monitoring
- Stakeholder-based advisory boards and committees
- SWA Comparative Performance Monitoring

Setting and being responsive to priorities and targets

Risk-based targeting for areas of greatest risk and greatest improvement:

- Industry sectors
- · Health conditions
- · High-hazard workplaces and activities
- At-risk groups of workers and community members

Enacted in

- WHS and ES strategies and priorities
- WHS and ES incident and complaint triaging and response (reactive to proactive)
- Planned WHS and ES incident and injury prevention work

Evaluating, monitoring performance and reporting for continuous improvement

Applying our regulatory assurance framework to close regulatory gaps and sustain improvements (overall approach and individual initiatives)

Designing strategic interventions

Using a mix of tools to address varying duty holder motivations to comply and drive behaviour and applying the *Queensland Compliance Monitoring and Enforcement Policy 2018*

- Policy development
- Audit campaign design
- Program design
- Inspection process
- Focus on industry and business structures and supply chains
- Maximum reach, influence and deterrence
- · Outreach to workers and the community
- Outreach to duty holders
- Co-enforcement
- Consultation and communication

Enacted in

- Information, education and advice
- Investigation outcomes
- Notices
- Case studies
- Licence suspensions/ cancellations
- Award recipients
- Prosecutions
- EUs
- Systematic WHS and ES management
- Legislation

Delivering effective interventions and regulatory responses

Increasing compliance and improving the culture of WHS/ES

- Proportionate to the extent of risk
- Aligned and responsive to motivational postures (willingness and ability to comply)

Enacted in

- Compliance campaigns
- Injury Prevention and Management Program
- Safety Leadership and Capability Programs
- Website, newsletter, email and social media communications
- Events
- Systematic inspection process
- Awards

⁴ See Weil (2010; 2018)

⁵ E.g. Black (2005); Black & Baldwin (2010); Gunningham (2015)

⁶ E.g. Ayres & Braithwaite (1992); Braithwaite (2011); Kolieb (2015)

⁷ E.g. Parker & Nielsen (2017); Johnstone (2004); Bluff & Johnstone (2017); Sparrow (2000; 2008; 2020)

Setting and being responsive to priorities and targets

We apply risk-based targeting to focus on the most serious current and emerging work health and safety, and electrical safety, risks to workers, industry and the community.

Establishing priorities

Our regulatory priorities are identified through analysis of workers compensation and other health and traumatic injury data sets, combined with intelligence from academic and industry sources, including from health and safety representatives, practitioners and professionals. We consult with the Work Health and Safety Board and its Industry Sector Standing Committees, Electrical Safety Board, and the Persons Affected by Work-related Fatalities and Serious Incidents Consultative Committee (Affected Persons Committee), to provide the reach into industry and the community to ensure we proactively focus on areas which present the highest risks and where the greatest improvement can be made, including:

- priority industries e.g. construction, transport, manufacturing, health care and social assistance, and agriculture
- health conditions e.g. musculoskeletal disorders, mental health conditions, some cancers, occupational lung diseases, contact dermatitis, noise-induced hearing loss and chronic disease
- high-hazard workplaces and activities e.g. theme parks, major hazard facilities, manifest quantity workplaces, major construction projects, contact with overhead or underground power/electric lines, and work near live parts
- at-risk groups of workers and members of the community e.g. workers in insecure jobs, workers vulnerable to exploitation, family farm members, people in older and potentially electrically unsafe homes, rural and remote workers and licensed asbestos removal workers.

We communicate our regulatory priorities through a range of material available on our website, worksafe.qld.gov.au.

We encourage raising of WHS and ES concerns and complaints as these provide essential on-ground intelligence for both immediate and longer-term priorities. We triage these concerns and complaints to apply a proportionate response that appropriately addresses any non-compliances raised. We encourage parties to actively address issues through the consultation, representation and participation processes outlined in the legislation, and by reference to the information and guidance we have available. In this way, many issues can be resolved without further action by the regulator. Increasingly, only the most serious concerns and complaints will receive a direct response from an inspector or investigator, to ensure that these valuable resources are targeted towards proactive inspections and investigations in areas where the greatest risks and least effective systematic controls exist.

Reviewing and monitoring priorities

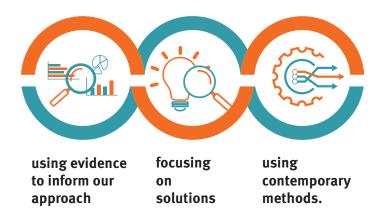
As part of our strategic planning activities, we review our regulatory priorities to ensure they are contemporary, reflect current and emerging issues and incident and injury and electrical risks and are aligned with community expectations and industry change. Priorities are assessed in terms of:

- the potential consequence for harm and the quality of controls applied to minimise residual risk, in industries, work situations or across geographical locations
- prospective benefit and resourcing of regulatory interventions for Queensland workers and communities
- capability development needs.



Designing strategic interventions

We appreciate there are many reasons for non-compliance and poor WHS performance, including underlying business drivers, incentives and other root causes. Our research and analysis equips us to understand and develop strategies to address these underlying systemic influencers. We shape our regulatory responses to create long-term and lasting outcomes that will reduce and where possible, eliminate harms in Queensland workplaces and communities. We aim to prevent harm and protect those most at risk by:



Understanding industry and business structures

We focus on understanding industry and business structures and supply chains, including product and work design, so that intervention strategies ensure that those who create the risk or benefit from the risk are held responsible for managing the risk.

Enhancing reach and deterrence

Our regulatory interventions are designed for maximum reach, influence, and deterrence, using a mix of tools sourced from the full breadth of our regulatory toolkit. Positive influencing and deterrence strategies are applied to achieve behaviour change at local, industry and geographic levels.

Outreach to workers and the community

We provide outreach services to workers, particularly by supporting health and safety representatives, to ensure that risks are identified and managed proactively through a process of consultation between workers and persons in control of a business or undertaking. Our active engagement through the Worker Consultation, Representation and Participation Strategy, and involving health and safety representatives, unions, other worker advocacy groups and community organisations, complements and guides, the substantial amount of information, guidance and tools available on our website. We recognise that in certain situations there is a power imbalance and we provide support to workers to ensure issues are addressed.

For electrical safety, our outreach to the community is particularly important to ensure protection from the risks of overhead power lines, unlicensed electrical work, unsafe appliances and electrical circuits without safety switches installed.

Outreach to duty holders

Similarly, we provide outreach services to duty holders, so that persons conducting a business or undertaking, officers of those businesses and other duty holders, understand their requirements and are well-equipped to systematically manage their WHS and ES risks and ensure the health and safety of themselves, workers and others. The information and guidance on our website and the workshops, seminars and conferences we provide, support better understanding and capability to identify and manage risks to health and safety. Our programs such as industry networks, Injury Prevention and Management Program, and Safety Leadership at Work Program, extend this support to tackle the compliance challenges which are driven by industry structures and practice, business structures, geography, competitive dynamics, and specific business and workplace history and culture.

Co-enforcement

We seek to maximise our impact by partnering with other regulators and agencies to share information and leverage resources and address duplication and gaps in our jurisdictional mandates.

Consultation and communication

We actively communicate – through our website, newsletter, social media, mainstream media and outreach activities – to ensure businesses, workers and the community are aware of our regulatory activities, why we are undertaking them and the direction we will take in the future. This communication is geared towards specific sectors and types of work so that they understand our reasons for focusing on them. We consult with Minister-appointed advisory boards and committees (such as the Work Health and Safety Board, Electrical Safety Board, Industry Sector Standing Committees and the Consultative Committee for Work-related Fatalities and Serious Incidents) to seek advice to ensure our overall approach and individual initiatives are appropriate and effective.

Delivering effective interventions and regulatory responses

We focus on the interaction between the regulator and the individual or business being regulated (the duty holder). The regulator considers whether the duty holder is recognising the potential for harms to occur, identifying appropriate risk controls, and taking action to address the issues. We use a hierarchy of regulatory actions to address the varying motives and approaches of duty holders to comply – in policy development, audit and program design, and inspection.

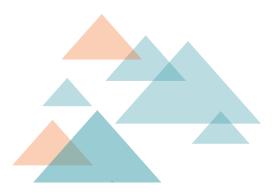
Regulatory diamond

We are guided by the stance duty holders take towards complying with their WHS and ES requirements and their responses as we interact with them (the motivational postures displayed by duty holders). Our regulatory responses integrate the well-known 'enforcement pyramid' with a 'strength-based pyramid' to encourage duty holders to go beyond simple compliance with legislative obligations to embrace the underlying principles and values behind these to achieve long-term sustained improvements. 9

The resultant regulatory diamond supports the regulator taking a proportionate response to the extent of non-compliance and the risk associated with it, whilst also supporting responsiveness through consideration of the attitudes and behaviours of duty-holders towards compliance. Our regulatory toolkit includes a wide range of actions and we select the best tools to leverage compliance.

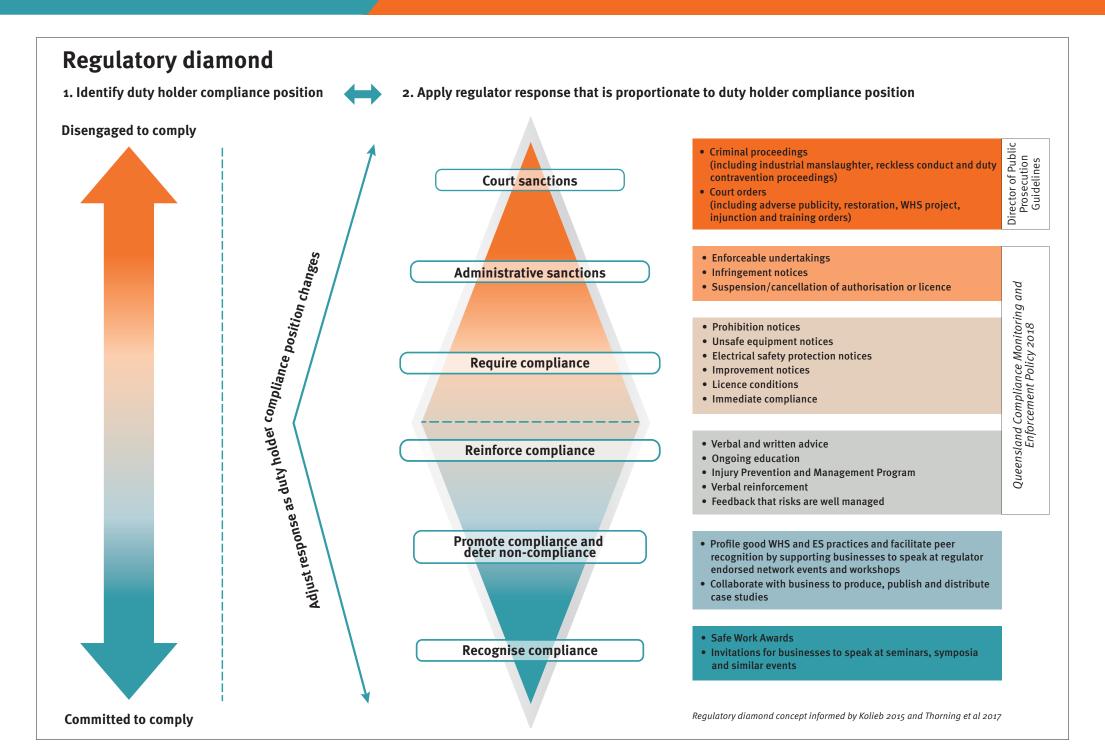
Information, advice and persuasion, provided on our website and through outreach activities, are used to identify that harms could occur and the actions duty holders can take to address the risk, resulting in compliance and improvement occurring with no direct action by the regulator. Where a duty holder demonstrates they are compliant, the regulator seeks to cultivate and reinforce this. However, where the duty holder does not recognise the potential for harm or is unwilling or unable to address it, our inspectors take increasingly forceful actions – conducting inspections, issuing notices, suspending licences, imposing fines and escalating matters to the Office of the Work Health and Safety Prosecutor for further action.

Stronger enforcement actions, including administrative and court sanctions, may be targeted at entrenched risks which have legislated provisions with clear and simple risk management requirements, and where there is widespread non-compliance or high clusters of risk.



⁸ Braithwaite (2014)

⁹ Kolieb (2015)



Our regulatory toolkit includes a wide range of actions

We select the best regulatory tools to leverage compliance



Our range of regulatory tools



Regulatory policy



Legislative reform



Regulatory partnerships

with other agencies, HSRs and other worker representatives



Officer duties and role of Boards



Supporting Health and Safety Representatives

and effective workplace consultation processes



Awareness and education-based communications and events



Advisory services



Licenses and authorisations of high-risk work, workplaces and plant



Response to incidents, concerns and complaints



Place-based and human-centric interventions

focussing on specific geographic clusters and/or user needs and human factors



Compliance monitoring

through inspector workplace visits, immediate compliance and liaison with HSRs



Directed compliance

enforcement including statutory notices and on-the-spot fines



Administrative measures

such as requests for documents, liaison with senior officer/s, and injunctions



Investigations and referral for prosecution

for both incident-based and pure risk contraventions



Evaluating, monitoring performance and reporting for continuous improvement

We are committed to effective performance monitoring, evaluation and continuous improvement of our overall approach and individual initiatives. We collect, analyse and interpret data and supplement it with contextual information to establish performance metrics and identify trends. High-level reporting occurs annually through Safe Work Australia's Comparative Performance Monitoring and the Queensland Government's Regulatory Performance Framework and Good Regulatory Practice Model requirements. Routine periodic performance reporting is provided to Minister-appointed boards and committees and through publications on our website. Court outcomes are published by the Office of the Work Health and Safety Prosecutor.

Regulatory Approach - Glossary of key terms

Term	Meaning
Advice	Guidance or recommendation offered to assist a duty holder to comply
Compliance	The action of duty holders satisfying their legislative obligations
Directed compliance	The enforcement measures available to the Regulator to direct compliance or sanction non-compliance, which then work as an effective incentive for compliance behaviour and as a deterrent to non-compliance. In an inspectorial context, inspectors are empowered to direct compliance by various means including the issue of an improvement notice; prohibition notice; electrical safety protection notice, non-disturbance notice, unsafe equipment notice, and/or infringement notice. The first priority for directed compliance is to address any circumstances that involve a serious risk to health and safety arising from immediate or imminent exposure to a hazard by issuing a prohibition notice; or an immediate electrical risk by issuing an electrical safety protection notice.
Encouragement	Action taken to offer a duty holder support or confidence to comply
Enforcement	Action taken to compel duty holders to comply with a law, rule or obligation
Framework	The high-level structure that supports the execution of a strategy by outlining the relationships and interlinkages for a system, concept or practice being applied
Intervention	A planned Regulatory response specifically designed to assess the compliance status of a targeted group of duty holders in a particular hazard or risk area and generate improved compliance (e.g. audit campaign)
Legislative reform	The process of examining existing laws and advocating and implementing legislative changes with the aim of enhancing justice or efficiency
Plan	A document used to support a framework or strategy that lists the activities that must be undertaken in order to execute the goals of a strategy or framework
Regulatory partnerships	A cooperative arrangement between Regulators to work together to progress outcomes and share resource efficiencies
Regulatory policy	A document authored by the Regulator that clarifies operational application of legislative requirements and regulator directions
Research	Systematic or methodical investigation for the purposes of gaining or establishing knowledge, and applying knowledge to develop and evaluate products, materials, processes and/or capabilities
Responsive	Timely decisions that lead to timely actions in anticipation of an emerging issue, hazard or problem
Strategy	The long-term conceptualisation of vision, goals and priorities in a given area

Citations

Ayres, I. & Braithwaite, J. (1992). Responsive regulation: Transcending the deregulation debate. Oxford University Press.

Black, J. & Baldwin, R. (2010). Really responsive risk-based regulation. Law and Policy, 32(2), 181-213. https://doi.org/10.1111/j.1467-9930.2010.00318.x

Black, J. (2005). The emergence of risk-based regulation and the new public management in the United Kingdom. Public Law, Autumn, 512-549. http://eprints.lse.ac.uk/id/eprint/15809

Bluff, E. & Johnstone, R. (2017). Supporting and enforcing compliance with Australia's harmonised WHS laws. Australian Journal of Labour Law, (2017)30, 30-57. http://hdl.handle.net/1885/222426

Braithwaite, J. (2011). The essence of responsive regulation, Fasken lecture. University of British Columbia Law Review, 44(3), 475-520. http://hdl.handle.net/1885/32227

Braithwaite, J. (2016). Restorative justice and responsive regulation: The question of evidence. RegNet Research Paper No. 2016/51. https://ssrn.com/abstract=2839086

Braithwaite, V. (2014). Defiance and Motivational Postures. In Bruinsma, G. & Weisburd, D. (Eds.), Encyclopedia of Criminology and Criminal Justice (pp. 1-12). Springer New York.

Gunningham, N. (2015). Compliance, deterrence and beyond. RegNet Research Paper 87. https://ssrn.com/abstract=2646427

Johnstone, R. (2004). Rethinking OHS enforcement. In Bluff, E. Gunningham, N & Johnstone, R. (Eds.), OHS regulation for a changing world of work (pp. 146-178). The Federation Press.

Kolieb, J. (2015). When to punish, when to persuade and when to reward: Strengthening responsive regulation with the regulatory diamond. Monash University Law Review, 41(1), 136-162. https://ssrn.com/abstract=2698498

Moore. M. (1995). Creating public value: Strategic management in government. Harvard University Press.

Parker, C. & Nielsen, V. (2017). Compliance: 14 questions. In Drahos, P. (Ed.), Regulatory theory: Foundations and applications (pp.217-232). ANU Press.

Sparrow, M. (2000). The regulatory craft: Controlling risks, solving problems & managing compliance. Brookings Press.

Sparrow, M. (2008). The character of harms: Operational challenges in control. Cambridge University Press.

Sparrow, M. (2020). Fundamentals of regulatory design. Independently Published.

Weil, D. (2010). Improving workplace conditions through strategic enforcement: A report to the wage and hour division. Boston University School of Management research paper no. 2010-20. https://ssrn.com/abstract=1623390

Thorning, P., Phillips, G., Thomson, V. and Bow, K. (2017) *Responsive regulation in OHS: utilising pyramids of support and enforcement to influence OHS improvement in a high risk industry*. Ninth International Conference on the Prevention of Accidents at Work. Prague. 3-6 Oct 2017.

Weil. D. (2018). Creating a strategic enforcement approach to address wage theft: One academic's journey in organizational change. Journal of Industrial Relations, 60(30), 437-460. https://doi.org/10.1177/0022185618765551

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