



Australian Government

Insolvency and Trustee Service Australia

**INSPECTOR-GENERAL
PRACTICE STATEMENT NO 1**

**Regulatory & Compliance Framework
for Bankruptcy Trustees and
Debt Agreement Administrators**

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Introduction:

1. This document examines the purpose of ITSA Regulation branch in undertaking the role of the Inspector-General in Bankruptcy of regulating Bankruptcy Act practitioners. It explores the philosophies and core strategies used in undertaking its role, against a backdrop of ITSA's purpose, stakeholder and public perceptions and expectations.
2. ITSA's purpose is *"To provide a personal insolvency system that produces equitable outcomes for debtors and creditors, enjoys public confidence and minimises the impact of financial failure on the community."*
3. The current [ITSA Business and Strategic Plan 2009-2010](#) states that the role performed by ITSA Regulation branch is:

"We regulate insolvency practitioners to ensure high national standards of personal insolvency practice and procedure and this includes:

- *registering private bankruptcy trustees and debt agreement administrators*
- *monitoring unregistered debt agreement administrators (ie those that have 5 or less active administrations)*
- *inspecting the systems and files of registered trustees and debt agreement administrators*
- *investigating complaints and applying sanctions when appropriate*

We also fulfil the Inspector-General's administrative review role, determining applications for review of decisions made by trustees."

4. This paper outlines the fundamental compliance model that underpins the regulatory strategies and guides ITSA Regulation's actions.

A Compliance Framework

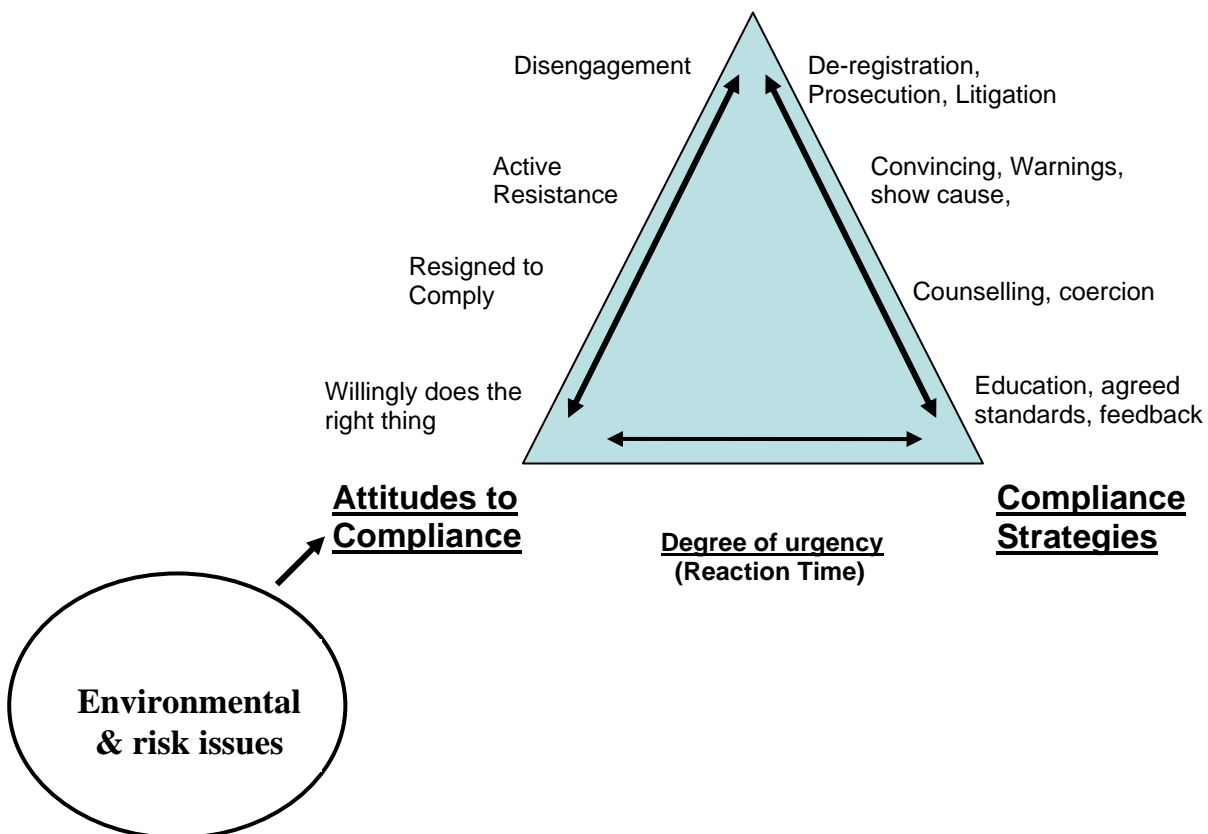
5. Non compliance is a significant risk to the integrity of the personal insolvency system in Australia and adds significant cost to the system. It is important to understand what motivates people to comply with legislation. You need to recognise that practitioners respond to their obligations under the Bankruptcy Act differently and that a one-size-fits-all approach is not the answer to achieving long-term compliance.
6. The compliance model depicted in Diagram 1 is a useful tool in understanding what a regulator needs to do and when. It draws on extensive research and follow-up work undertaken in developing the ATO compliance strategy, incorporating work by Dr Val Braithwaite and her colleagues.
7. The model depicted has 3 key elements:
 - Environmental and risk issues that may effect compliance
 - Attitudes to Compliance
 - Compliance Strategies

8. It also has degrees of connectivity between these elements which also enables an assessment of the degree of urgency needed in respect to the how ITSA Regulation might assist in achieving compliance.

Risk analysis and Environmental mapping of the individual

9. Clearly people are different. ITSA Regulation needs to understand the environment that each operates in and understand what factors influence their attitude to compliance. These factors will include business factors, the part of the insolvency industry they are in, geographical, economic and sociological issues and their own psychological makeup.
10. What drives attitudes in some will not influence others. ITSA Regulation should therefore take care not to stereotyping practitioners. This may mean that ITSA Regulation has to treat some practitioners differently to obtain compliance. ITSA Regulation currently undertakes a risk analysis of each practitioner based on the size of their business, levels of segregation of duties and other controls in place, history of the practitioner with respect to complaints, annual inspection errors and Inspector-General reviews overturning their decisions.
11. In addition to undertaking a risk rating based on the empirical data in our risk model ITSA Regulation also needs to understand what leads individual practitioners to comply or to not comply. A practitioner’s risk rating and their attitudes to compliance will determine the strategies adopted for achieving compliance.

Diagram 1 ITSA Regulation Compliance Model



Attitudes to Compliance

12. The second aspect to consider is the relationship between compliance attitudes and strategies that should be utilised. These are reflected diagrammatically above. On the left of the triangle, there is a continuum of attitudes to compliance, depending on what is happening at the time. At the base of the continuum people have the desired attitude of being willing to do the right thing. These are trustees and administrators who, for example, will hurry to correct any error or non-compliance identified.
13. The continuum acknowledges that attitudes can change at different times. For example a practitioner may move from being willing, to active resistance and back to resigned compliance on an issue, and the change could be outside of the regulator's influence driven by their own environmental factors. The important thing to note about this model is that before moving into "disengagement" shown at the apex of the triangle, practitioners are still willing to work with the regulator to comply, albeit begrudgingly in some cases where there is some disagreement.
14. The most serious situation is when a practitioner has disengaged. They have essentially moved out of the regulatory/compliance system (the Act and Regulations including the Schedule 4A Standards, case law and Inspector-General's directions). They become non-compliant practitioners – those who choose to avoid their responsibilities, indulging in game playing and ignore or flout regulatory warnings. Obtaining compliance in these cases can be extremely costly and difficult.

Compliance Strategies

15. The right hand side of the model features a hierarchy of compliance strategies, increasing in severity. This list is not comprehensive rather indicates the general nature of strategies that can be employed.
16. The model gives people every opportunity to get it right. Research shows that a regulator should be aiming to keep practitioners at the bottom of the triangle, so ITSA Regulation commences on the basis of working cooperatively with practitioners using supportive regulatory strategies which include:
 - Working closely and consulting with professional associations
 - Education & training;
 - Proactive inspections feedback;
 - Joint development of standards; and
 - Providing assistance including involvement in alternative dispute resolution.
17. As you move up the model our strategies become more focussed on keeping people on track with compliance, with strategies such as reminder letters and phone calls to encourage rectification. Further up the continuum you move into strategies including investigations, warnings of consequential action that might eventuate, section 12 reports being released to creditors or IPA, publicity and possibly some legal action.
18. At the top of the list are the strongest quick strike strategies, used for the most serious issues and non-compliant practitioners. Examples of action at this level are prosecution, litigation, cancellation of registration and publicity. These strategies should also used where the most

serious issues emerge that challenge the credibility of the personal insolvency system, even though the practitioner may subsequently acknowledge their mistakes or non-compliance and move to remedy same.

Using the model

19. Regulators are viewed with integrity only when they use the range of tools available when needed for the particular situation.
20. Research shows that it is also easier and cheaper to keep people at the bottom of the pyramid. If you want people to do the right thing, you need to provide them with opportunity and choice. This has generally been ITSA Regulation's approach to date.
21. It is important to recognise that strategies on the lower end of the RH hierarchy, aimed at willing practitioners, will have little impact on a practitioner at the LHS top end disengagement area of the model. If there is serious non-compliance and ITSA Regulation doesn't take quick tough action it will be seen to lack integrity leading others to lessen their willingness for compliance.
22. Equally ITSA Regulation will also be seen as lacking regulatory integrity if it uses strong enforcement strategies on a willing complier for anything less than the most serious issues. Utilising extreme regulatory strategies from the apex of the model on a practitioner with a history of willingness to comply may well have the reverse impact on the practitioner's willingness to comply in future moving them up the attitudes side of the model. It's all about matching and balancing the strategies with the compliance attitudes.
23. A significant aspect of the model is the ability of practitioners to move from the top to the bottom of the model (as well as the reverse). One mistake does not brand them for life. It is important to give people the opportunity to move down the model and it is important to use strategies that do not drive them up the model.
24. It is also important to note that regulatory effectiveness needs to be measured across the range of compliance strategies not just one element. For example the level of education and information activity is just as important a measure as the level of disciplinary action taken, and probably more so.

Getting the strategies clear

25. ITSA Regulation needs a different mix of strategies and escalation levels. These need to be comprehensively articulated.

Understand behaviour

26. ITSA Regulation needs to be active in finding out what is happening in the profession. Systemic liaison with key professional bodies at regional and national levels is essential. Obtaining a greater understanding of the environmental issues impacting locally is needed and people should pass on ideas and findings on issues that might be causing non-compliance.

Liaison & Nurture relationships

27. ITSA Regulation needs to continue to look for opportunities to work with practitioners, creditors, other government agencies and community organisations to educate people about their obligations. Find the people who have most influence and work with them.
28. Everyone likes to be recognised for doing a good job. ITSA Regulation should be giving positive feedback if a practitioner is doing the right thing. It is important to let them know particularly if they've erred before. It is appropriate to give this feedback in complaint findings, on review of decisions, and annual inspection during exit interviews, particularly where a practitioner's performance has improved from that identified in the past. This doesn't prevent the regulator from taking issue with practitioners in future if they err.

Encourage compliance by choosing the right approach

29. ITSA Regulation will treat all people as individuals with respect in accordance with the APS values approach. It is important ITSA Regulation articulates the Inspector-General's expectations in respect to practice and conduct and encourage people to use our information and web based help facilities as much as possible. Action needs to take note of past compliance and current circumstances. The tone of corresponding is to be professional and factual.
30. ITSA Regulation should consider what they know about the person and utilise the most effective compliance strategy to ensure compliance now and in the future.
31. When a practitioner has been given reasonable opportunity to comply and has elected not to do so, ITSA Regulation will take quick decisive action.