

**FROM PREMISE TO PRACTICE: STRATEGIC
DECISION-MAKING IN RISK-BASED REGULATORY
AGENCIES**

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STATEMENT OF ORIGINALITY

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. I give consent to the final version of my thesis being made available worldwide when deposited in the University's Digital Repository subject to the provisions of the Copyright Act 1968.

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Undertaking a PhD thesis is a defined journey comprising discrete stages, or so it seemed to me at the outset. There is a start, and finally, a finish, with a number of important stages to traverse in between. This much is true. What was not foreseen is the transformational nature of the journey. At the beginning of this undertaking I was a senior manager and regulator in the public sector, with many years of experience. Now at the end of the journey, I have gained a greater appreciation, and attainment, of academic skills of researching, gathering and analysing evidence, and writing these findings up in a cohesive and comprehensible manner.

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ABSTRACT

In a departure from the bulk of studies on regulatory decision-making, this study is an exploration of how the premise of a risk-based approach is put into practice through strategic decision-making processes. Current contemporary scholarship on regulatory decision-making explores enforcement of statutory requirements, such as activities of frontline or street level public servants (May & Wood, 2003) or impacts or outcomes of interventions with regulated entities (Gunningham, 1987; Parker, 2006). In contrast to these studies, this research considers the internal arrangements of regulatory agencies, that is, what actually occurs, and how, in strategic decision-making processes from interpretation of risk-based policy through to translation into strategies and actions.

For many risk-based regulatory agencies, decision-making processes shape compliance outcomes such as the elimination or mitigation of public risk. Decisions made by these regulatory agencies thus have implications for individuals and entities affected by those decisions, as well as for the agency itself. In Australia, the work health and safety regulatory landscape has evolved since the 1980s from a prescriptive, or rule-based approach, to a more responsive risk-based regulatory framework. This framework encompasses principles of transparency, accountability and a focus on risk as a basis for compliance and enforcement interventions and actions. More recently, in a context of overlapping responsibilities and variations in enforcement and compliance practices, work health and safety regulators across Australia have attempted to harmonise the relevant legislation and in the process, reduce the regulatory burden on affected entities.

This thesis examines the development and implementation of strategic decisions in four regulatory agencies in work health and safety jurisdictions in Australia. It presents an interpretive study of processes of decision-making in those regulatory agencies, and identifies ways in which decision-makers interpret harmonised policy and translate it into strategies and actions. Data were collected, compared and contrasted at jurisdictional, management and operational levels. The collection of data was undertaken at multiple sites over two discrete timeframes and obtained from a range of sources, including face-to-face and telephone interviews, questionnaires and analysis of documents.

The findings conclude that the application of harmonised risk-based policy across the four regulatory agencies provides a uniform basis for regulatory decision-making that is predicated on risks and based on the use of evidence. Notwithstanding this uniformity, as decisions are made by top and middle managers, trade-offs are extracted in the decision-making process. This thesis finds that these trade-offs are in response to a range of factors. These factors include tensions between harmonised risk-based regulatory strategy and the application of problem-solving methods; the influence of stakeholders in framing the development and implementation of strategic decisions; limited resources, as well as limitations in discretion that reduce the ability to develop and deploy effective approaches to identified problems. The application of risk-based policy approaches in decision-making processes, despite being uniformly adopted by Australian work health and safety regulatory agencies, does not wholly delineate where those agencies tolerate risk and which approaches to apply to identified problems.

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KEY TERMS

Regulation is rife with terminology that is familiar to the practitioner but perhaps not so clear to others. In addition, across the range of literature reviewed in this study, there are multiple definitions of terms. The key regulatory terms used in this thesis are presented below to provide clarity to the reader as to the intent of meaning in the use of these terms.

Term	Meaning
Preventative decisions or actions	Preventative (or proactive) decisions are planned, based on complex and in some cases unknown problems. The process of preventative decision-making is more likely to be flexible and adaptable, as a consequence of the changing risk environment in which such decisions are made (Black & Baldwin, 2010, 2012).
Problem-solving methods	Problem-solving methods are denoted by “the systematic identification of important hazards, risks, or patterns of non-compliance; an emphasis on risk assessment and prioritisation as a rational and publicly defensible basis for resource allocation decisions; the development of an organisational capacity for designing and implementing effective, creative, tailor-made solutions for each identified problem; [and] the use of a range of tools for procuring compliance and eliminating risks” (Sparrow, 2000, p.100).
Response decisions or actions	A response (or reactive) decision reacts to identified breaches or non-compliance, where standard processes are employed, such as the issue of notices, withdrawal of approvals or the application of financial penalties.
Regulator, regulatory agency	These two terms are used interchangeably, denoting a public authority that is generally part of a larger public sector organisation, but which has autonomous status as defined in law to administer defined legislation over an area of public activity through a range of enforcement and compliance actions.
Regulated entity	This term refers to an organisation or individual that is subject to the regulatory jurisdiction of the regulator. It can be differentiated from a stakeholder by the coercive nature of the relationship where the regulated entity is obliged to comply with relevant legislation, but is used interchangeably with the term ‘stakeholder’ in this thesis.
Risk-based approach	A risk-based approach is characterised by systemised decision-making frameworks based on risk likelihood and consequence, as well as processes that prioritise regulatory activities and strategically deploy regulators’ enforcement and compliance resources on the basis of the identified risks (Black & Baldwin, 2010, 2012).
Stakeholder	In this thesis Freeman’s 1984 definition of stakeholder is used, whereby a stakeholder is “any group or individual who can affect or is affected by the achievement of the organization's objectives” (Freeman, 2010, p.vi).
Strategic decision	According to Mintzberg, Raisinghani and Theoret (1976), a decision is a “specific commitment to action (usually a commitment of resources)” and strategic “simply means important, in terms of the actions taken the resources committed, or the precedents set” (p.246). The term ‘strategic decision’ is used in this thesis to describe a major program of work that was identified as important, and initiated through the regulatory agencies’ strategic planning processes.

ACRONYMS AND ABBREVIATIONS

ANAO	Australian National Audit Office
ANZSOG	Australian and New Zealand School of Government
ASCC	Australian Safety and Compensation Council
COAG	Council of Australian Government
NCEP	National Compliance and Enforcement Policy
NOHSC	National Occupational Health and Safety Commission
NPM	New Public Management
OECD	Organisation for Economic Co-operation and Development
OHS	Occupational health and safety
HWSA	Heads of Workplace Safety Authorities
SWA	Safe Work Australia
WHS	Work health and safety

CHAPTER 1: INTRODUCTION

“Hundreds of thousands of regulatory and law enforcement professionals stand between the state of the law itself and the delivery of effective frontline protections. What they do matters. It matters how they organise themselves. It matters when and why they enforce particular laws. It matters whether and how they organise their discretion...” (Sparrow, 2012, p.1)

Background to the research

“Somebody has to die”. This blunt statement was uttered by a participant in a professional development workshop on strategic aspects of regulatory practice (Australian and New Zealand School of Government, *Managing Regulation, Enforcement and Compliance*, Brisbane, December 3-8, 2006). The workshop, based around problem-solving methods, was designed for senior managers involved in regulatory decision-making. Problem-solving is defined as “an integrated risk-based approach to compliance and enforcement” (Sparrow, 2000, p.155). It requires locating and implementing appropriate responses to identified social problems that are often complex in nature and incoherent in form. This manager’s exasperated comment arose from a discussion on the challenges of transforming the management of regulatory compliance from a response mode to a more preventative risk-based approach that seeks out problems and develops tailored approaches to those problems.

The comment reflected frustration at the practicalities of implementing risk-based approaches where such preventative approaches are hard to explain and justify to stakeholders and the broader community. Risk-based approaches focus on difficult, persistent or specific problems that require concentrated and targeted approaches by the regulator (Black, 2010; Black & Baldwin, 2012). Such approaches are predicated on the design of interventions that utilise a mix of tools and actions based on the nature of identified risks. Risk-based approaches are characterised by systemised decision-making frameworks based on risk likelihood and consequence, as well as processes that prioritise regulatory activities and strategically deploy resources on the basis of the identified risks, or problems (Black, 2010).

The translation of regulatory policy into strategy and actions is undertaken through individual regulatory agencies' decision-making processes. Deliberating on the manager's seemingly insensitive comment, there were competing truths at play. Whilst one death is unfortunate and certainly preventable, it does not necessarily represent regulatory failure by the agency, as indeed the regulator's strategic decision-making processes may prevent other deaths and injuries from occurring. The objective of this study of workplace health and safety regulators is to make more visible the somewhat indiscernible processes by which managers in risk-based regulatory agencies make decisions about problems on which to focus in undertaking their statutory functions, the means by which agency resources are deployed to those problems and how those decisions are justified. The importance of preventative strategic decisions made by those managers cannot be overstated, as decisions about which risks on which to focus, and how, have major consequences for workplace health and safety outcomes.

Paraphrasing the Sparrow (2012) quote at the top of this chapter, it matters how these decision-makers identify specific problems for attention amongst the multitude of work health and safety harms; it matters how they organise resources, including tools, to develop approaches to difficult or persistent health and safety problems, and it matters how they explain and justify their decisions to an increasingly aware and often critical polity. The decisions made by these managers may be the difference between workers going to work and then returning safely home to their families, and the tragic but all too familiar outcome of injuries, illnesses and deaths occurring because of failures in effectively implementing regulatory policy and ensuring compliance.

According to Safe Work Australia (SWA), in Australia in the 2010-11 financial year, there were 132,570 workers' compensation claims for serious work-related injuries or illnesses (resulting in death, a permanent incapacity or a temporary incapacity requiring an absence from work of one working week or more). Tragically, 228 of those workers died due to an injury incurred at work (SWA, 2014). Decisions made by managers in work health and safety regulatory agencies about what problems to focus on, and how, also impact on economic costs to businesses and the community. In the 2008-09 financial year, the total economic cost of work-related injuries and illnesses in Australia was estimated to be \$60.6 billion dollars, or 4.8% of Gross Domestic Product (SWA,

2014). In addition to economic and social costs, decisions made by these managers on responses to identified harms may also have major ramifications for the regulatory agency, including the potential for loss of confidence by government and the community.

These are all powerful concerns and highlight the research problem of how decision-makers in a risk-based regulatory environment interpret policy and translate it into strategies and actions. The outcomes of decision-making processes to *prevent* risks are not as visible as the consequences of the *occurrence* of harm. Quite simply, if something is prevented it does not occur. If a risk is mitigated, the harm is not as great. Perversely, the customary view of work health and safety decision-making is often defined by the nature of interactions *after* the regulator mobilises resources to attend workplaces and investigate notified incidents.

This view is an incomplete one, often based on regulator responses to the occurrence of harm. These responses do not fully reflect overall changes in the Australian work health and safety regulatory landscape. Over recent decades these changes are evident in the transition from a prescriptive or rule-based approach, to a more responsive regulatory policy framework based on identification of risks and management of harm (Black, 2005). According to the Organisation for Economic Co-operation and Development (OECD), a responsive regulatory framework encompasses principles of transparency, accountability and a focus on risk identification as a core basis for compliance and enforcement interventions and actions (OECD, 2010).

Despite this new operational focus in regulatory agencies much of the research on regulatory decision-making has been on enforcement of statutory requirements. These requirements are generally depicted in the compliance and enforcement activities of frontline or street level public servants (May & Wood, 2003) or the impacts or outcomes of interventions with regulated entities (Gunningham, 1987; Parker, 2006). Many of these studies omit a more detailed understanding of decision-making processes by which preventative actions are instigated within the regulatory agency. There is scant information on how regulatory agencies translate broader risk-based policy imperatives to strategy and actions through their decision-making processes. This study ascertains

what actually occurs in those strategic decision-making processes to give effect to risk-based regulatory policy.

The focus of this study is on social regulation rather than economic, or market, regulation. Risk-based regulation such as work health and safety can be differentiated in its decision-making processes due to the public nature of risk, where regulators act in the public interest in addressing social problems (Baldwin & Cave, 1999; Hopkins, 2007; May, 2002). In this risk-based regulatory domain there is debate on the limits, and indeed risks, of risk-based regulation. This study touches on this debate to the extent that the research questions encounter aspects of risk-based regulatory decision-making. The debate on the limits of risk-based regulation ranges from criticism of the application of risk concepts as based on uncertainty and thus lacking scientific validity (Bounds, 2010) to the notion that taking a risk-based approach to decision-making abrogates regulators from responsibility for their decisions (Hood & Rothstein, 2001). Even those that take a measured view of risk-based approaches point to decision-making challenges in allocating resources across a range of ever increasing and complex options (Black & Baldwin, 2010).

From the literature on regulation there is a sharpening of research focus on decisions and actions of regulators. However, this literature does not generally differentiate between the actions of inspectors and the strategic decision-making processes that underpin those actions. This research enters and examines this understudied area through a study of strategic decision-making processes of managers implementing harmonised risk-based preventative approaches in four Australian work health and safety regulatory agencies. In addition to adopting a common risk-based regulatory framework, work health and safety regulators across Australia have attempted to harmonise the relevant legislation and in the process, reduce the regulatory burden on affected entities.

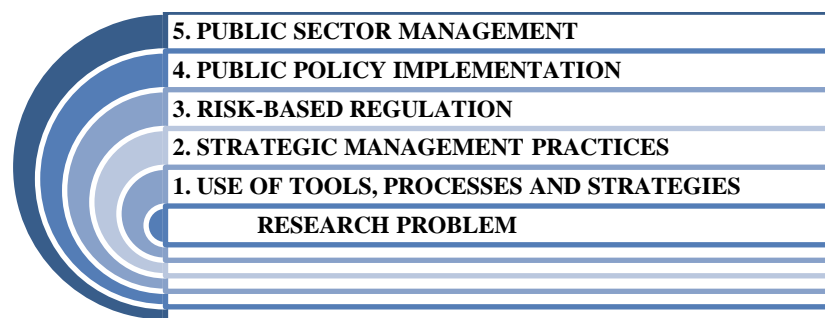
By examining the links between harmonised risk-based regulatory policy and strategy development and implementation, this study contributes to strategy research by providing insights into underlying mechanisms that shape regulatory strategic decision-making. In doing so, it contributes to a reduction of the knowledge gap between what is

expected of regulators (the premise) and evidence about what actually happens (the practice).

The research problem and questions

The research problem considers how regulatory agency decision-makers translate risk-based policy and broad strategy imperatives into action. This study is distinctive in that it studies the ‘black box’ of strategic decision-making in risk-based regulatory agencies, the aim of which is to provide in-depth understanding of the strategic decision-making processes of risk-based regulators. In doing so it departs from the bulk of studies that focus on regulator enforcement actions or compliance responses of regulated entities. The approach taken to scoping out the research problem and defining the research questions more precisely was a multi-faceted one, as the research problem is nested in a range of associated interactions and processes as represented in Figure 1.1 below:

Figure 1.1 Nested research problem



As demonstrated above, the research problem of how decision-makers interpret harmonised policy and implement it through their decision-making processes into strategies and actions touches on and cuts across a number of areas. The decision-making interactions and processes are based on (1) the use of agency tools, processes and strategies within (2) strategic management practices of regulatory agencies, that are tasked with (3) implementing a consistent risk-based approach to work health and safety regulatory compliance, which (4) delivers the intent of the public policy of harmonised work health and safety legislation, within (5) the broader context of state or territory based public sector management.

New public management (NPM) and new public governance (NPG) are theoretical concepts which have framed much of recent academic discourse on public management. Osborne (2010) suggests these concepts are connected, reflecting a continuum of public management theory development from public administration through to NPM and to NPG. NPM is defined by the separation of policy making and administration (Groot & Budding, 2008), with a focus on performance and results (Pollitt & Bouckaert, 2004; Van Dooren, Bouckaert & Halligan, 2010) and the devolution of authority (Boyne, 2002; Nutt, 2000). However, NPG is not as clearly delineated, carrying some prior baggage as to its meaning and thus application. These meanings derive from theoretical bases that can be differentiated into three broad schools: corporate governance, 'good governance' and public governance (Osborne, 2010). There are explanations of governance that equate public governance and public management however the consensus suggests that these are linked, but not necessarily interchangeable (Osborne, 2006, 2010).

Despite the multiplicity of definitions, NPG is generally defined by concepts of participation and pluralism. These concepts are demonstrated by the inclusion of stakeholders in decision-making processes, including in the development of policy, the implementation of strategy and the delivery of services (Bevir, 2011). NPG also carries implications of 'good' governance which places increased emphasis on the accountability of decision-makers in these processes (Considine & Ali Afzal, 2011). These implications lead to key public governance elements of "accountability, transparency, participation, relationship management and, depending on the context, efficiency and/or equity" (Edwards, 2002, p. 52). Such factors impact on the way in which regulatory agencies convert policy to strategy in the NPG era.

Strategy is the way in which organisational policy objectives and actions are developed and implemented (Hart, 1992). There is vast literature on policy, strategy and strategic processes. The early sixties saw, under the broad banner of planning, a focus on tools and techniques to enable management decision-making. This focus evolved into framing the direction of the organisation through strategic positioning (Whittington, 1996). The substance of much of this research on strategy was around organisational change, predominantly in private sector organisations. From this research, there evolved

consideration of the activity of strategy and commensurate practices within organisations that enable the process of strategy.

Contemporary scholarship identifies strategy as an activity, a process or a practice (Jarzabkowski, 2005; Johnson, Langley, Melin & Whittington, 2007; Pettigrew, 1992; Whittington, 2006). Such observations reflect detailed examination of strategic processes and practices undertaken within an organisation which have implications for strategy outcomes. The literature on strategy includes a number of typologies by which to explain the process (see for example Nutt & Backoff, 1995), but many of these elucidate strategy as an entity, something that *is*, rather than as a practice, something that is *done* (Jarzabkowski, Balogun & Seidl, 2007; Johnson et al, 2007). More recently, particularly through the efforts of strategy-as-practice scholars, strategic management processes are being reconstructed as dynamic processes (see for example Jarzabkowski & Spee, 2009; Johnson, Prashantham, Floyd & Bourque, 2010; Langley, 2007). These and other researchers have opened up new approaches to research into the work of Whittington's "ordinary strategic practitioners in their day-to-day routines" (Whittington, 1996, p. 734).

The literature on regulation reveals a gamut of quantitative or qualitative research studies of specific regulatory domains, such as work health and safety (Hopkins, 2007; Johnstone & Wilson, 2006), environmental safety (Haines, 2011) and consumer protection (Parker, 2006). Some works touch on decision-making processes but treat these processes as ancillary to the actions of front-line officers (Pires, 2011) or deal with them in traditional studies of discretionary decision-making (Braithwaite, Coglianese & Levi-Faur, 2007). Other more targeted studies examine responses by regulated entities to decisions by regulators (Haines, 2011; Hopkins, 2007), or outcomes of interactions between the regulator and regulated entities (Nielsen & Parker, 2009). Whilst encompassing a number of aspects of the research problem, this literature is less comprehensive in relation to the actual processes by which decisions are made within regulatory agencies that translate policy into strategy.

The main research question asks how, in a risk-based regulatory environment, is harmonised policy translated into strategies and actions? A number of subsidiary research questions were formulated from the review of literature. These subsidiary questions are:

1. In a risk-based regulatory environment, how do decision-makers identify problems for attention?
2. How do decision-makers in risk-based regulatory agencies select and apply approaches to address these problems?
3. Over time, what factors influence the choice of one approach from another in the range of regulatory discretion options?

Research approach

In order to address the research questions this study focuses on four of the eight Australian work health and safety regulatory agencies. These agencies encompass a number of States and Territories to enable different contexts to be compared and contrasted, whilst minimising potential cross jurisdictional variances by focusing on work health and safety regulators. The Australian work health and safety regulatory environment was selected for two main reasons. Firstly, for the first time in Australia, there was something close to an overarching work health and safety legislative framework. Since 2008 all Australian work health and safety regulators had been involved in arrangements to implement harmonised work health and safety legislation by 2011. These harmonised arrangements include the adoption of uniform regulatory policy, and thus provide a consistent context in which the details of strategic decision-making could be more closely examined for similarities as well as differences.

The second reason was despite this commonality, there are pronounced differences across those jurisdictions fully engaged in the harmonised arrangements. Not only are there differing Commonwealth, State and Territory political, economic and social environments, the organisation of each of the regulators is distributed across various metropolitan and regional locations with differing structures and staffing that offered potential for variation. The Australian work health and safety arrangements thus provide

apposite conditions, as well as critical tests, for an examination of decision-making processes by which managers develop and implement risk-based preventative regulatory strategies.

Using the criteria of consistency as a logical construct, this research looked for both similarities and differences in examining the operational elements and linkages of decision-making processes in the four regulatory agencies that participated in the study. A pragmatic approach was taken to examining undefined options for individual regulators as to which tools, processes and strategies to implement in decision-making. As the research questions are based on processes of decision-making, the sample was drawn from those people who have information about those processes (Cassell & Symon, 1994). Strategic decision-making, as articulated in the regulators' relevant strategic and business plans, is viewed through the filter of top, middle and operating management levels (Floyd & Lane, 2000) to ascertain and evaluate those managers' involvement in the development and implementation of strategic decisions.

The aim of this research is to provide in-depth understanding of strategic decision-making processes of risk-based regulators. In this respect, the study contributes to strategy-as-practice, a comparatively new aspect of strategy process research (Jarzabkowski, Balogun & Seidl, 2007; Whittington, 2006). The strategy-as-practice perspective is not centred on any particular theoretical framework or method, based as it is on an empirical inquiry around the *doing* of strategy. This research examines strategic decision-making processes in four regulatory agencies over an eighteen-month timeframe. The interpretive study observes and examines these processes, and thus is primarily descriptive, based on an analysis of processes of decision-making in the four regulatory agencies that form the study, and comparative, to detect both similarities and differences across the participating regulatory agencies.

The data were collected longitudinally at multiple sites over two discrete timeframes, or phases. Participating regulators' policy and strategic planning documents and reports were analysed at each phase as context for the interviews. A number of methods were used to collect data, including semi structured face-to-face and telephone interviews; structured self-completion questionnaires and desk based analyses of documentation,

including planning documents and reports against plans, as well as selected archival material. The findings from the four regulatory agencies is compared and contrasted to generate themes and patterns that reveal the regulators' strategic decision-making processes.

The four different regulatory agencies that participated in this study are united by the application of a risk-based approach and by a uniform compliance and enforcement regulatory policy under the recent harmonisation agenda. Notwithstanding these commonalities, there are differing processes in place across the four regulators that are not fully explained by differing state and territory political, economic or social environments. What emerges from the findings in relation to the main research question is that whilst risk-based regulation is an established means of addressing regulatory problems, other contextual factors such as the broader adoption of NPM and NPG principles impact the decision-making processes of regulatory agencies.

The research findings provide empirical evidence of the defining elements and characteristics of the decision-making processes of regulatory agencies. The research findings also reveal that decision-making processes are underpinned by four interrelated elements. These are direction, designation, development, and deployment. Collectively, these elements reflect the practice and in some cases the premise of decision-making, as those in the regulatory agencies attempted to translate risk-based policy into strategies and actions. These findings suggest several practical courses of action for consideration by risk-based regulators in their strategic decision-making processes. Combining normative as well as analytical research aspects, these elements are then assigned to a framework for decision-making.

Outline of the thesis

This thesis comprises seven chapters. This first chapter presents the focus of this research as an examination of the development and implementation of strategic decisions in four risk-based regulatory agencies in work health and safety jurisdictions in Australia. It provides an overview of the research problem and details the

development of the research questions. This part of the thesis presents the argument that despite a focus in the literature on regulatory decision-making there is scant information on how risk-based regulatory agencies translate broader policy imperatives into strategy through their decision-making processes.

Chapter 2 comprises an overview of relevant literature based on the scope of the research problem. Given the broad scope of the problem across a number of themes, the literature reviewed is also broad. The review of literature encompasses a consideration of regulatory decision-making in the context of public management and regulation. It then sharpens focus to speak directly to the specifics of how risk-based regulators operationalise policy and address complex problems through their strategic decision-making processes. The review of literature reveals that not much is known about regulatory decision-making in the area of harmonised risk-based policy. Where such decision-making is examined, there is little distinction between the actions of inspectors and the strategies that underpin those decisions. The literature also suggests that decision-making involves potential tensions in the integration of risk-based approaches and NPG principles.

Chapter 3 documents the research approach and explains the qualitative methods used to collect and analyse the data over two discrete phases. It also provides details of how the research was conducted, and discusses the ethical issues arising from the conduct of the research. As the research contributes to the strategy-as-practice field of research this perspective is also explained. The interview, questionnaire and documentation data collection and analysis methods are detailed and justified as the most appropriate medium to provide the rich data suitable for induction and the development of knowledge. The data collected allows for a critical analysis of decision-making processes of each of the four regulatory agencies. Through iterative analysis of the data a number of salient points and pervasive themes are identified. From this inductive process patterns are determined of the respondents' strategic decision-making processes.

Chapter 4 introduces the findings of this study relating to the interpretation of harmonised policy. It commences by examining the implementation of risk-based approaches in Australia in order to set the context for the findings from the research. This chapter then draws on the analysis of documentation to explain the policy processes to establish harmonised work health and safety legislative arrangements in Australia, and the jurisdictional structural arrangements of the regulators. Whilst the adoption of risk-based principles supports discretionary decision-making, paradoxically the adoption of harmonised legislative arrangements promises consistency and standardisation. The chapter then looks more closely at how respondents from the four regulatory agencies that participated in the study interpret these policy arrangements prior to translating into strategy.

The data analysis indicates that all four regulatory agencies engage with stakeholders not only as a means of enabling compliance, but as active participants in the strategic decision-making processes. This engagement has implications for some regulators in managing stakeholder expectations of the decision-making process. The interaction of public sector principles such as those that define NPG with risk-based approaches has particular implications for regulatory agencies. Managing diverse stakeholder expectations propels risk considerations into the regulator's strategic decision-making protocols and processes.

Chapter 5 considers this translation of risk-based policy into practice through an examination of decision-making processes undertaken by top, middle and operating managers in the four regulatory agencies. This section is structured around findings from qualitative and quantitative data collected through interviews, questionnaires and analysis of documentation across the two phases of the research. Translating risk-based policy into strategies and actions involves the application of problem-solving methods. Problems are identified by a range of evidence beyond the regulatory agencies' own operational data, and includes stakeholder input to validate the choice of problems. However, the involvement of stakeholders creates a range of additional tensions that require consideration and adjustment in the regulators' decision-making processes. The successful implementation of strategic decisions relies on engaging with stakeholders

and managing expectations about this engagement based on the creation of relationships founded on a number of trust considerations, rather than compulsion.

Whilst the regulatory agencies aim to tailor approaches to problems, ultimately the choice of tools is confined to the standard range of tools from the regulators' toolkit. Developing innovative approaches to implementing strategic decisions can be in itself risky, as influences from both within and outside the regulatory agencies create pressures to divert to customary and familiar enforcement approaches.

Chapter 6 considers decision-making factors that over time influence the choice of one approach from the other in the range of regulatory discretion options available. This chapter also considers the roles of management in exercising discretion, including the use of tools and engaging with affected parties. The data analysis shows that the implementation of strategic decisions depends on management practices and roles that impact on the decision-making processes.

Delays in approval or lack of support by senior management create tensions between the execution of strategy as top down or bottom up. Interruptions to the decision-making process suggests limited discretion and autonomy by middle managers in implementing strategic decisions. In addition, competing priorities within the regulatory agencies between reactive and preventative programs of work reflect tensions in applying a risk-based approach built on problem-solving methods.

Chapter 7 comprises a discussion of the findings from the previous three chapters. Unique attributes are extrapolated from these findings to provide a schematic of decision-making elements and characteristics. These distinct, or in some instances similar but differently nuanced characteristics, are then synthesised in an integrated framework of decision-making in risk-based regulatory agencies. Following this discussion, a conclusion brings together the main findings and their implications for theory and for practice. The chapter closes by identifying limitations of the study and flags future research directions.

CHAPTER 2: LITERATURE REVIEW

Introduction

Chapter 1 presented an overview of the thesis including the research problem and associated questions that consider how regulatory decision-makers interpret policy and translate it into strategies and actions. The adoption of harmonised risk-based policy by Australian work health and safety regulators suggests transformations in their strategic decision-making processes in the identification of problems and the selection of approaches to address those problems. The *how* and *what* nature of this study of decision-making phenomenon required a selective review from the literature. This review thus commences with an examination of the literature on regulatory policy and associated risk-based decision-making approaches. Next, the literature and attendant debate on public management and associated policy implementation through strategic management processes of public sector organisations is explored. The literature review is then refined more purposely to sharpen focus on aspects of strategic decision-making processes within risk-based regulatory agencies.

The regulatory environment

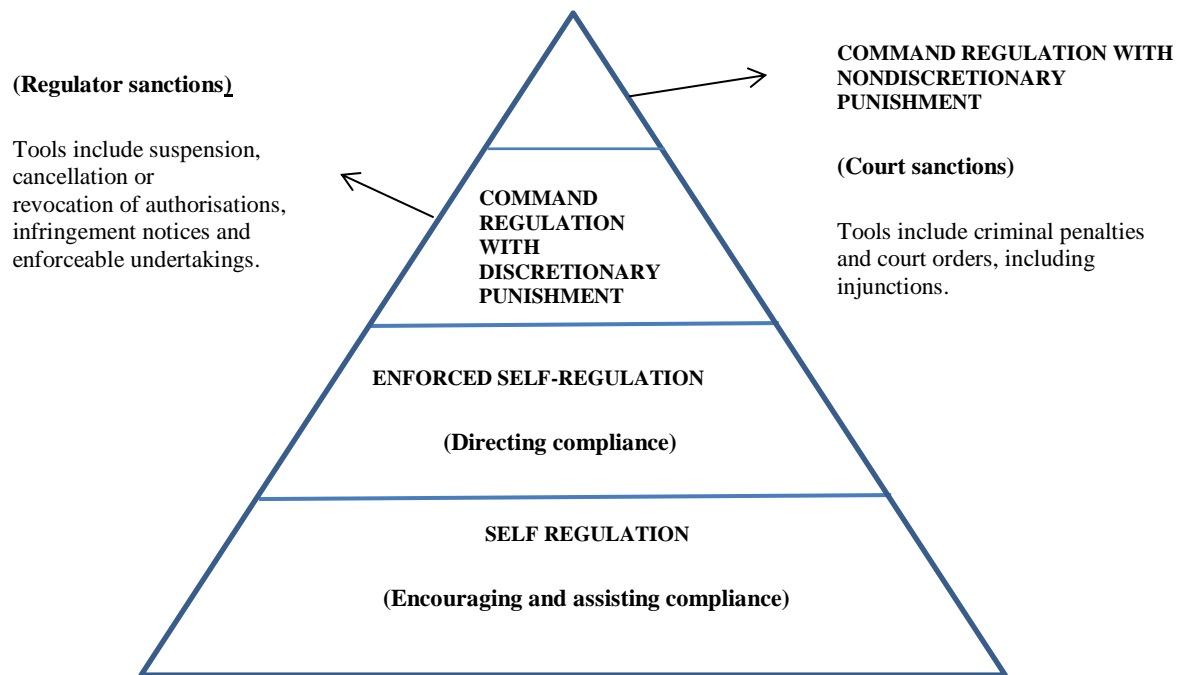
Regulation can be defined from its narrowest to broadest sense as a set of rules to facilitate monitoring and enforcement of compliance (Baldwin, Scott and Hood, 1998; Freiberg, 2010); as a means for governments to influence the economy (Baldwin, Scott & Hood, 1998) or as a means of social control (Jordana & Levi-Faur, 2004). Another perspective of regulation is as an element or subset of governance where regulation is about influencing events and behavior (Braithwaite, Coglianese & Levi-Faur, 2007, p.3). Despite variations in interpretation, regulation can be generally categorised as state intervention by the making and enforcement of rules. A number of regulatory models have been developed over recent times that reflect various approaches to regulatory practice.

These models, based on current regulatory theory, encompass a range of thoughtful and well documented frameworks for regulators to consider when implementing regulation, and highlight the fluidity of administrative and regulatory practice to support

compliance and enforcement actions. However, in their case study of the application of three perspectives of contemporary regulatory models, Wright and Head (2009) suggest that despite the plethora of models there is no one model able to sufficiently explain current arrangements, nor provide perspectives to enable improvements to those arrangements. They submit that a pragmatic, or learning, approach to the application of regulatory models “maintains a sceptical distance from regulatory recipes...[and]...that ‘classic’ or habitual models of regulation could be poor guides to current problems” (Wright and Head, 2009, p.192). Given the diversity of regulatory domains, the translation of these classic regulatory models to strategies and actions requires adaptation and flexibility when designing approaches to compliance and enforcement.

One of the more familiar classic regulatory models is responsive regulation. Responsive regulation can generally be defined by the premise that regulators should use persuasive means to achieve compliance unless it is clear that those being regulated are unwilling to comply, at which stage regulators shift to coercive means. This coercion is undertaken by enforcing compliant behaviours through the application of tools such as fines, cancellation of licences or withdrawal of approvals. As described by Ayres and Braithwaite (1992), a responsive approach to regulation defines risks on the basis of what works, rather than based on rational choice models (p.19). These responsive choices are illustrated by a regulatory strategy pyramid as a means of explaining compliance approaches based on the use of a graduated mix of administrative measures and legal sanctions to verify compliance and apply sanctions. These measures are depicted in figure 2.1 below.

Figure 2.1 Regulatory strategy pyramid



Adapted from Ayres and Braithwaite, 1992, p.39.

Since the concept of the regulatory strategy pyramid was first advanced, the principles of responsiveness have been taken up by numerous regulatory jurisdictions as a model for regulatory policy. As demonstrated in the figure above, the pyramid specifies a graduated approach to different modes of compliance activity with relative weighting towards assisting compliance. This graduated approach is based on the availability of a range of tools, including administrative and legal measures to verify compliance and apply sanctions. The primary approach taken by regulators is to assist compliance by building awareness, knowledge and skills in regulated entities and other duty holders. The focus on encouraging compliance is shown by greater weighting at the base of the pyramid to the use of advisory and information tools as the basis for improvement, to encourage and support self-regulation by regulated entities.

As illustrated in figure 2.1 above, by checking and verifying compliance through responding to incidents and complaints and by designing targeted interventions, regulators can determine whether regulated entities are meeting their obligations, and if not, direct compliance actions through issuing improvement and prohibition notices. In

instances where regulated entities are identified as not meeting their obligations, then sanctions will be applied. These sanctions include suspending, cancelling and revoking authorisations; issuing infringement notices (fines) or directing enforceable undertakings, as well as imposing court sanctions such as criminal penalties and court orders. A key principle in adopting the pyramid is the concept of proportionality, that is, the action taken is in proportion to the breach or identified risk (SWA, 2011). In adopting such an approach of proportionality, responsive regulation proposes a nuanced approach to the enforcement of regulation which is sensitive to the compliance postures of regulated entities.

Regulatory reform across western nations has also included the imperative to adopt risk-based strategies and tools in the design of compliance and enforcement policy (Baldwin & Cave, 1999). In part in response to the claim of over regulation and commensurate moves to deregulate, a focus for regulators since the early 1980s has been to move to the identification and recognition of risk as a key element of regulatory policy (Baldwin & Cave, 1999). Reflecting these changes across western nations, in the Australian regulatory environment risk-based regulation and associated decision-making based on risk attributes is well established (OECD, 2010). The OECD noted that risk-based compliance approaches not only maximise the potential for achieving policy goals, they also are efficient in reducing the economic burden on citizens and businesses (OECD, 2010).

Australia was an early adopter to risk-based approaches in regulatory policy, with an OECD review of regulations in Australia noting that “States are taking strong action toward relying on risk-based enforcement strategies. In all States, at least half of business regulators had risk-based enforcement strategies as of June 2007” (OECD, 2010, p.69). A risk-based approach to regulation requires attention to issues that represent highest risk and a comparable treatment of similar risks, with the concomitant benefit of a more efficient use of the regulators’ resources. According to the Australian and New Zealand Risk Management Standard, (AS/NZS ISO 31000:2009), risk-based approaches are predicated on principles that are integral to organisational processes including strategic planning, and include the creation of value through achieving objectives. The Standard (2009) suggests that application of a risk management

approach helps decision-makers make informed choices among alternative potential courses of action, particularly in an environment of uncertainty. These choices are based on a range of information sources and tailored to align with identified risk profiles. Additionally, a risk management approach involves both internal and external stakeholders in the decision-making process (AS/NZS ISO 31000:2009).

In an analysis of the grey literature, including the compliance policies of a number of risk-based regulatory agencies across Australia, it is evident those regulators have well-articulated policies and operational procedures which incorporate risk management principles. These regulatory agencies include Victorian Environment Protection Authority; Queensland Department of Environment and Heritage Protection; Australian Competition and Consumer Commission; Consumer Affairs and Fair Trading Tasmania; Office of Consumer and Business Affairs South Australia and New South Wales Department of Primary Industry. Notwithstanding the availability of comprehensive guidance material setting out what regulators should do, including practical examples from cases, such guidance is delineated by centralised and conceptual doctrines (Black, 2005, p.156). Quite simply, whilst conceptually helpful, this guidance material can be overly simplistic, failing to capture underlying considerations that shape the interpretation of regulatory policy and its translation into strategy. Framing risk-based principles as common elements of strategic decision-making has the potential to simplify a rather more complex set of considerations, which may inhibit achievement of these risk-based policy goals and strategic objectives.

Nonetheless, risk-based regulators cannot address every identified risk, so they apply discretion and address complex problems by utilising the various regulatory decision-making tools they have available to them (Braithwaite, Coglianese & Levi-Faur, 2007). Risk-based policy approaches are characterised by systemised decision-making frameworks and procedures that prioritise regulatory activities and strategically deploy regulators' enforcement and compliance resources (Black, 2005; Black & Baldwin, 2012). Such decision-making frameworks are generally based on a risk matrix, where risk reflects the probability or the likelihood of an event's occurrence and the impact of the consequences of that event (Black, 2005; Black & Baldwin, 2010). However, in a risk-based approach, such decision-making also includes seeking out and interrogating

risks beyond the immediate regulatory environment (Baldwin & Black, 2008; Black & Baldwin, 2010). In this respect decision-making by regulators encompasses aspects of risk that go beyond the nature of targeted risks that are the focus of compliance actions.

Risk-based regulation is specifically intended to improve public welfare through regulating risky behaviours that affect public safety, health and well-being. To this extent risk-based regulation is characterised by public interest theory in that regulators act as agents for the public interest rather than pursuing group, sector or individual self-interests (Baldwin & Cave, 1999). Because of this behavioural aspect, some suggest it is more complex to manage than other types of regulation, such as economic or market regulation (Hopkins, 2007; May, 2002, 2007). The complexity of risk-based regulation in addressing social problems such as work health and safety can be differentiated in its decision-making processes because of this public nature of risk. Such public risk has direct impacts on individuals and society. Deaths, injuries and illnesses occur because people simply ignore risks, underestimate the extent of the risk, or overestimate their capacity to deal with the risk (Renn, 2010, p. xiv). Regulating social risks, such as work health and safety, is particularly challenging, described as “highly coercive and intrusive, surprisingly indirect, usually not very automatic, and relatively invisible” (May, 2002, p.158). These attributes create a layer of complexity for decision-makers when interpreting regulatory policy and translating it into strategies and actions.

Given this complexity, and despite widespread adoption of risk-based principles in regulatory policy, the interpretation of such policy principles by regulatory agencies and its translation into strategies and actions is problematical. In his review of regulation in the United Kingdom, Hampton (2005) suggested that, notwithstanding a general recognition of risk assessment as fundamental to effective implementation of regulation, risk-based principles were not fully implemented (p.1). His proposal that implementation of risk-based policy does not fully reflect the theory has also been supported by others. Despite the current prominence in risk-based regulatory literature of the theoretical underpinnings of responsive regulation, Wood, Ivec, Job and Braithwaite (2015) conclude in their comparative study of workplace regulation in a number of western countries, including Australia, that it was not evident whether responsive regulatory practices reflect the theory. In summarising examples of the

application of responsive regulation in Australia and overseas, they ponder whether such principles have actually been put into practice, or whether the regulators they studied aspire to such implementation (Wood et al., 2015, p.3).

The literature on regulatory policy presents a number of models, including the much-utilised regulatory strategy pyramid, that advances consistent practices by which regulatory agencies can frame their strategies and actions. However, decisions made by risk-based regulators are differentiated by complex options based on uncertainty and unclear consequences. Implementing risk-based approaches, despite systemised decision-making frameworks and procedures, is characterised by ambiguity and tensions. In considering these characteristics, there is no 'one size fits all' approach to administering risk-based regulation, and accordingly, individual regulators make decisions in an environment of risk ambiguity and competing choice. Such ambiguity and discretionary selection suggest that despite the premise of harmonised arrangements, in practice these harmonised arrangements may disintegrate as choices are made by decision-makers when policy is translated into strategy and actions by individual regulators.

These choices include:

- what criteria to apply to identify risks that can differentiate them from the plethora of risks;
- having defined the risks, which ones to choose for attention;
- what from the array of potential approaches to the risk will ensure that it is removed or mitigated;
- from the resources available to the regulator, which resources are available to be allocated to the range of competing priorities;
- what options can be accessed to engage with those being regulated, and finally
- how to explain and defend those decisions that satisfy accountability requirements.

Drawing from additional literature, these characteristics are now examined in detail, by firstly examining the contexts in which regulatory policy and strategy is enacted, and then by drawing out implications for decision-making by regulatory agencies.

The decision-making context

Regulatory agencies are generally part of larger public sector organisations and ministries, but have independent status as defined in law. However, despite having a clearly delineated function, such agencies are not fully independent, as the ministry has the power to control the budgets and goals of the regulatory agency (Pollitt, Talbot, Caulfield & Smullen, 2005). For example, at the time of this study Comcare, the Commonwealth regulator of work health and safety, operated within the Employment portfolio. In New South Wales the Occupational Health and Safety Division, a State regulator, part of WorkCover New South Wales, was located with another agency within the Safety, Return to Work and Support Division and reported to the Minister for Finance and Services. The placement of regulatory agencies within larger public sector organisations makes the discussion of public sector principles integral to a discussion of the implementation of regulatory policy by such regulatory agencies. Two key public sector aspects of note from the literature are New Public Management (NPM) and New Public Governance (NPG).

The influences of New Public Management (NPM) and new public governance (NPG) attributes on public management processes have attracted some attention in the public management literature since the early 2000s. NPM, a term attributed originally to Hood (1991), is generally defined by the importation of a number of private sector themes such as devolving authority and ensuring performance and accountability. Hood (1991) identified NPM as “a loose term...[its]...usefulness...as a shorthand name for the set of broadly similar administrative doctrines which dominated the bureaucratic reform agenda in many of the OECD group of countries from the late 1970s” (pp.3-4). One of the characteristics of NPM is the separation of policy making and administration, with a centralisation of policy formulation and decentralisation of implementation (Groot & Budding, 2008).

Other attributes of NPM include a focus on performance and results (Pollitt & Bouckaert, 2004; Van Dooren, Bouckaert, & Halligan, 2010) and the devolution of authority, including giving managers more scope in decision-making (Boyne, 2002; Nutt, 2000). One implication of the influence of NPM for middle managers in particular

is a significant expansion in responsibility and accountability across management functions, including managing resources, budgeting and planning, as well as dealing with stakeholders (Alford & O'Flynn, 2009; Moore, 1994, 1995; O'Toole, Meier & Nicholson-Crotty, 2005). This devolution of responsibility also places greater accountability on middle and operational managers tasked with implementing regulatory strategy.

One of the other noteworthy changes attributed to NPM is a shift in the role of government, primarily from a direct provider of services, to a facilitator of some services. Indicative of this shift are arrangements such as public-private partnerships that involve government and the private sector forming business relationships to deliver public infrastructure (Bovaird, 2004; Hodge & Greve, 2009) or implement social policy (Bovaird, 2004). There is also a burgeoning area of research on networked (Keast, Mandell, Brown & Woolcock, 2004; Kickert, Klijn, & Koppenjan, 1997; Stoker, 2006) as well as joined up arrangements (Pollitt & Hupe, 2011; Stoker, 2006) between government and service providers to deliver services. Further indicative of the shift in the role of government in delivery of services through alignment with others are the metaphors of 'hollow states' and 'negotiated states' (Peters & Pierre, 1998), reflecting the escalating role of third parties in public sector policy development and implementation processes. Such arrangements have become increasingly popular over the last few years as traditional models of service delivery have been argued to be ineffectual in addressing increasingly complex public problems. By connecting with the recipients of government services to better ascertain solutions, as well as engaging with a range of delivery mechanisms via non-government bodies, government can purportedly be better placed to address complex problems.

NPM is an evolving concept, and governance in the public sector, or more specifically NPG, is the next stage of that evolution (Osborne, 2006; Osborne & Brown, 2011; Rhodes, 1996, 2007). This observation may be seen as simplistic in placing the emergence of paradigms such as NPM and NPG as sequential, when they reflect much more complex concepts. However, as Osborne (2006) himself notes, NPG is "both a product of and response to the increasingly complex, plural and fragmented nature of public policy implementation and service delivery in the twenty-first century" (p. 9). In

this respect, the emergence of NPG can be seen as an attempt to define an aspect of public management that cannot otherwise be explained by existing paradigms. Indeed, the emergence of NPG can be seen as a response to the fragmentation of governance capacity in the public sector attributed in part to NPM (Koppenjan & Koliba, 2013), as well as the increasing complexity faced by governments in delivering public services (Bevir, 2011).

Nonetheless, the concept of governance itself is not clearly defined, due in part to the multiplicity of applications (Edwards, 2002, p.51). There is a wide variance in definitions of governance, from the suggestion to keep the use of the term simple and dictionary based (Hughes, 2010), to the suggestion that governance is a narrative, based on beliefs, practices, traditions and dilemmas (Rhodes, 2007). Although the meaning of NPG is contested, it is now a defining element of public sector administration. Despite an acknowledgement that NPG grew out of changes to the management of public sector services and processes, it is not the same as public management. Similarly, it is generally agreed that NPG is not the same as government or governing. What is generally agreed is that NPG is defined by the interconnection of public, private, and not-for-profit agencies and actors delivering public services by working cooperatively across discrete organisational and sectoral boundaries. The term NPG thus incorporates some concepts of rules and systems, a focus on effectiveness and legitimacy as well as on processes and associated delivery arrangements.

In these aspects NPG reflects NPM in such features as delivery arrangements that have increasingly seen the joining together of multiple parties to address social problems. However according to Osborne (2006), NPG can be differentiated from NPM by the pluralist nature of these arrangements rather than the disaggregated nature of NPM; unlike NPM which has a focus on intra-organisational management, the focus of NPG is on inter-organisational governance, and the emphasis of NPG is on service processes and outcomes, unlike NPM emphasis on service inputs and outputs. NPG draws attention to the interrelatedness of policy development and implementation with service delivery processes (Osborne, 2006). Benefits of NPG include pooling of resources and ideas in order to jointly seek out solutions to identified problems (Torfing and Triantafyllou, 2013, p.15).

Despite differences in the literature of explanation and emphasis, the influence of NPM and NPG has seen shifts on strategising for public sector agencies, including regulators. These shifts are reflected in the decentralisation of policy implementation and the devolution of authority, including giving managers more decision-making authority. The NPM and NPG literature also suggests that interaction with stakeholders is an integral aspect of public management. However, in practice, the inclusion of these stakeholder considerations in decision-making may present significant challenges for those decision-makers in regulatory agencies that are tasked with translating regulatory policy into strategies and actions. Traditional private sector typologies of strategy processes do not easily transfer to the public sector, as public sector policy and strategy implementation processes are defined by dynamic political and risk environments.

From policy to strategy

Having considered the contexts in which regulatory policy and strategy is enacted this section now examines literature that provides perspectives on unique attributes that inform considerations of the interpretation of public policy and its translation into strategies and actions. Strategic planning requires organisations to articulate and establish goals and objectives; conduct environmental scanning for opportunities and threats; assess their capabilities, and make critical connections between those organisational capabilities and environmental opportunities and threats (Hendrick, 2003, citing Andrews, 1980).

There is a robust discourse in the research community around the identification of strategy as content (the Classical School) compared to/versus strategy as process (the Processual School) and associated themes of macro strategy and micro strategy (Whittington, 1996). A number of discussion strands to strategy as content themes are based on top-down (Mazmanian & Sabatier, 1989; Porter, 1980; Sabatier, 1986) and bottom-up aspects of strategy (Hjern & Porter, 1981; Lipsky, 2010). These diverse perspectives of strategy development and implementation reflect the ambiguity of these processes. Both within and between public sector organisations there may be different applications of strategy, based on the organisation itself or down to the level of programs undertaken (Alford & Hughes, 2008).

Other discussion is around strategic decision-making and models for decision-making that include the rational/bounded rationality model (Simon, 1979), political/power implications (Pettigrew, 1979) and the garbage can model (Kingdon, 2011). In a review of the strategic decision-making literature Eisenhardt and Zbaracki (1992) suggest that the dominant paradigms of rationality and bounded rationality, politics and power, and garbage can, whilst controversial at the time, now are concepts that have been overtaken by more contemporary implications, including what actually occurs in the decision-making process (p.17). Such decision-making models also do not accommodate contingency, a factor that risk-based regulatory agencies deal with on a regular basis as they respond to the dynamic political and risk environment (Meier et al, 2007).

The significance of strategy process research is in its central questions about recurrent features of strategy, including consideration of how policy outcomes are influenced by these processes (Pettigrew, 1992, p.11). These broad questions can be linked to the relationship of strategic decision-making processes to performance outcomes (Mueller, Mone & Barker, 2007). This link between strategic decisions and performance outcomes has been well covered in the literature (for example Eisenhardt, 1989; Mintzberg, 1978; Pettigrew, 1979), with some researchers suggesting however that this link is tenuous, or at least only one factor. As Miller, Wilson and Hickson (2004) found in their exploration of the link between strategic decisions and success, planning is of lesser consequence than the effective management of implementation. They suggested that planning is only one possible success factor, and that success is more reliant on flexibility in the decision-making process, in order to more effectively traverse the changing aspects of implementation (Miller et al, 2004, p.213).

According to other research, one of the many variables in the strategy implementation process that can impact on how participants comprehend and implement the policy goals of the organisation is the communication of those goals. In a North American survey of 443 managers responsible for strategy execution, Hrebiniak (2006) identified five obstacles to strategy execution, that if not addressed would lead to failures in strategy implementation. Of these obstacles, four had elements of communication, and included “poor or vague strategy; not having guidelines or a model to guide strategy implementation efforts; poor or inadequate information sharing among individuals/units

responsible for strategy execution and unclear responsibility or accountability for implementation decisions or actions” (Hrebiniak, 2006, p.17). According to this study, clarity of purpose and task, as well as accountability, would appear to be key elements in the strategy implementation process.

Similarly, research by Bryson and Bromily (1993) on contextual aspects that impact on strategic planning processes found that frequency and level of communication are factors that can impact on organisational performance. Additionally, planning goals are more likely to be achieved if participants in planning processes are satisfied with those processes (Hendrick, 2003). Miller (1997) also found that of four key critical success factors in implementing strategic decisions, two were predicated on aspects of communication. These factors were based on clarity of objectives and precision about tasks to be undertaken in achieving those objectives (Miller, 1997, p.587-588). Clear communication of strategic goals and the means by which those goals can be achieved have thus been identified from the relevant literature as success factors in the implementation of strategic decisions. The implications of communication as a success factor for decision-making processes within regulatory agencies is therefore of some consequence in achieving policy goals and delivering the objective of strategy.

A central feature of strategic management processes is as the means of providing coherence to the dynamic interdependent strategising activities that take place across organisations. Alignment to strategic orientation is a key element of implementation success, however this success is based on finding the best fit with the style of implementation (Andrews, Boyne, Law & Walker, 2009, p.664). Although this alignment provides coherence, in regulatory agencies the need for responding to contingency requires flexibility in strategic processes. Flexibility is a factor that should be considered in the public sector strategic decision-making processes, given the distinctive nature of the public sector environment. Increasingly, public sector agencies are required by central government to develop strategic plans against which performance, including service effectiveness and outcomes, is judged (Kester, 1999; Peters & Pierre, 1998). These performance expectations flow on to regulatory agencies. Policy departments of Australian public sector agencies generally set regulatory policy, and regulators implement the objective of the policy through their strategic processes.

One of the differences between the public and private sectors is characterisation of the public sector by “turbulence, interrupts, recycles and conflict” (Nutt, 2000, p.77).

Connecting public sector strategy to its environment highlights the need for a framework for decision-making that accommodates this context, ideally a framework that provides some direction regarding designing an approach based on the circumstances, or combinations thereof (Bryson, Berry and Yang, 2010, p.501).

Developing and implementing decisions

From the forgoing review of relevant literature, some public management practices, and commensurately regulatory management practices, that reflect private management approaches include implementation of strategy and accordingly, implementation of strategic decisions. As Simon (1997) pointed out in his early work in the 1950s on administrative organisations, whilst the types and contexts of decisions may vary, administrative processes invariably are decision-making processes, thereby inextricably linking management and decision-making. Subsequently there has been a great deal of attention in the literature on decision-making, and in particular the processes of strategic decision-making. This attention has primarily been on the private sector, with much of the literature presenting the effects of formulating and implementing strategy through decision-making processes (Andrews et al, 2009).

Strategic decision-making has been described as a series of defined steps (e.g. Fredrickson, 1984; Mintzberg, Raisinghani, & Theoret, 1976) whereas others describe dimensions of the decision-making process, such as comprehensiveness (e.g. Miller 1997), rationality (e.g. Eisenhardt & Zbaracki, 1992); centralisation (e.g. Cray, Mallory, Butler, Hickson & Wilson, 1988; Miller 1997); bargaining (e.g. Pettigrew, 1979) and politicality (e.g Pfeffer & Salancik, 1974). According to Mintzberg, Raisinghani & Theoret, (1976), a decision is a “specific commitment to action (usually a commitment of resources)” and strategic “simply means important, in terms of the actions taken the resources committed, or the precedents set” (p.246). As advanced by Mintzberg et al (1976), strategic decisions are major outcomes of the strategy process and require extensive commitment of resources.

However, strategic decisions are also complex, reflecting characteristics that present challenges to those seeking to implement them (Nutt and Wilson, 2010). These characteristics include the elusive nature of problems that makes it difficult to define them precisely and thus find viable approaches to these problems. Such approaches are themselves uncertain, with multiple options and no clear end point by which to assess effectiveness. Additionally, strategic decisions have the element of political pressure brought by key players to make sure choices taken incorporate their partialities (Nutt & Wilson, 2010, p.4). For public sector organisations, there are additional complex factors at play compared to the private sector. These include distinctive economic, legal and political features (Rainey, Ronquillo & Avellaneda, 2010). These characteristics highlight not only the complexity of strategic decision-making, but also the implications for both individuals and organisations involved in the processes of decision-making.

Decisions made by managers are a key element for the successful implementation of strategic decisions in organisations (Miller, 1997; Nutt, 1999). In a systematic examination of decision-making success in a number of public, private and third sector agencies, Nutt (2000) suggested that in the public sector, approaches that delineated success were more complex than those of private sector organisations. Overall the findings for public sector organisations were limited by this complexity. However, Nutt (2000) did conclude that incorporating provision for learning could produce good outcomes for public sector organisations. In his investigation of decisions made by senior managers across a range of public, private and third sector organisations in the United States and Canada, Nutt (1999) identified that tactics managers use in decision-making impact on outcomes, rather than the conventional wisdom that failure is explained by things “beyond a manager’s control” (p.75). However, whilst Nutt’s research is based on the implementation of strategic decisions, his focus is on the management style adopted during decision-making processes to put decisions into effect. His research did not specifically look at management actions, including the use of tools, processes and strategies.

Jarzabkowski’s (2008) research into strategy in practice in three United Kingdom (UK) universities, drawing on activity theory to investigate the micro practices of managers in those universities, highlights the impact of the alignment of actors within an

organisation. Her study illustrates the way that practices either distribute shared interpretations or mediate between contested interpretations of strategic activity (Jarzabkowski, 2008). Additionally, her research with Wilson in a single in-depth case study of a UK university on how top management teams put strategy into practice showed that whilst organisational structure is a key influence in the actions and processes of top management teams, it is not a determinant. Rather such strategic processes “comprises actors, practices and social structures interacting within a community of interpretation” (Jarzabkowski & Wilson, 2002, p.378), thus highlighting the complexity of strategic decision implementation.

Miller (1997), in her study of key success factors in implementing strategic decisions, looked at three levels of informants: (1) those involved in making the decision, (2) those involved in implementing it and (3) those affected by but not necessarily directly involved in the decision making. The successful implementation of strategic decisions was not defined by the level of management involvement but more from a unity of purpose (Miller, 1997, p.595). Miller’s (1997) study of eleven cases, four in the public sector, identified four critical factors, or ‘realizers’ as being critical to success or failure in implementing strategic decisions. These factors are “backing, clear aims and planning, and a conducive climate – as long as chance events do not get in the way” (Miller, 1997, p.577). Other factors, identified as ‘enablers’, whilst providing “the facilitating conditions of know-how, impetus, adequate resources, appropriate structures and flexibility, they do not embody the central driving force which pushes implementation further forward” (Miller, 1997, p.595). In this study Miller reflects a digression of some decision-making studies from those that view strategic decision-making as the province of top management.

Whilst top managers have long been recognised as integral to strategic decision-making (Jarzabkowski & Wilson, 2002; Samra-Fredericks, 2005), involvement of middle managers in the strategy process is increasingly recognised as critical in implementing strategy. Accordingly, there is growing recognition of the role of middle managers in shaping and influencing strategic direction through a range of formal and informal interactions (Balogun, 2003; Currie, 1999; Floyd & Wooldridge, 1992). The role of middle managers includes implementing strategic decisions developed from

organisations' strategic plans by directing and aligning operational resources accordingly (Currie, 1999; Floyd & Wooldridge, 1992; Nutt, 1987). The involvement of middle managers in decision-making is not only for the purposes of enabling implementation, but also to improve the quality of decision-making, as "substantive involvement can be achieved best in organisational contexts where individuals are comfortable critically examining strategic decisions" (Wooldridge & Floyd, 1990, p.240).

The role of middle management as an area of strategic management research has thus become increasingly prominent in the research literature, in line with a growing recognition that the process of strategy, that is how strategies are developed and implemented, can be influenced by others such as middle managers and operating managers. These management influences include as agents of change (Huy, 2000); setting the strategic context for decision-making (Hoon, 2007); as a means of connecting persons and processes (Balogun & Johnson, 2004; Floyd & Wooldridge, 1992) or even as impediments (Guth & Macmillan, 1986). Despite this growing knowledge of the role of middle managers in strategic decision-making processes, their contribution in regulatory agencies to implementing those decisions is not as well understood. Given this involvement of others such as middle managers in the decision-making process, managerial tasks in public sector agencies are defined by the "right people" participating and minimum interference from top management, whereas the private sector require appropriate resources, including appropriate information and capacity (Rodrigues & Hickson, 1995, p.655). In public sector organisations, including regulatory agencies, these internal success factors of the 'right people' reflect the significance of participants in the decision-making processes when translating public policy goals into strategies and actions.

In the dialogue around implementation of public policy the vocabulary has also included the idea of evidence-based as a critical aspect of policy, and subsequently of strategic decision-making. Decision-making based on evidence may be perceived as a rational process (Kovner & Rundall, 2006). However, evidence itself is obtained through a dynamic process that involves problem identification and discretion about alternative choices, and thus is not an ordered process (Baba & HakemZadeh, 2012). In

regulatory decision-making, the use of evidence is more nuanced, its application as an underlying principle for decisions rather than a definitive basis by which decisions are made (Head, 2008; Nutley & Webb, 2000). The concept of evidence is a compelling basis for decision-making, with the view that evidence presupposes a single, rational optimal basis (Argyrous, 2012). However, in some respects these concepts have been appropriated by government as a means of deflecting public scrutiny of policy decisions (Turnpenny, Nilsson, Russel, Jordan, Hertin and Nykvist, 2008). Furthermore, the genesis of evidence-based decision-making in the scientific community and thus its dependency on rationality - facts rather than values - makes it a concept at odds with some public social policy decisions (Nutley & Webb, 2000).

It is difficult to link an evidence-based approach to decision-making, particularly in relation to social problems. These problems are often defined by their complexity and the inability by decision-makers to isolate causation and thus develop effective approaches to those problems (Nutley & Webb, 2000; Watts, 2014). Others posit that public sector decision-making processes in tandem with community consultative mechanisms provide the means to identify problems. This engagement with the community elicits information and ascertains priorities before public sector decision-makers have identified them, or fully scoped out the nature of the problem (Head, 2008). The premise of evidence-based policy drawn from an organic communication process is a compelling one. However, in practice it can be undermined by political influences, for example where a strategic decision may not fit with broader political preferences, including those of stakeholders (Scholz, 1991; Turnpenny et al, 2008).

The influence of stakeholders

The translation of public policy into organisational strategy and actions is increasingly influenced by the regulated and broader community, or stakeholders (Hendrick, 2003; Moore, 1995; Nutt & Backoff, 1995). Engagement with citizens is a theme that emerges from both the NPM and NPG literature in the development and delivery of those strategies (Klijn & Koppenjan, 2000; Klijn, Steijn, Edelenbos & Vermeeren, 2011). When developing and implementing policy, public sector managers are now required to not only engage upwards, downwards and crosswise in their own organisation, but to

engage outwards with other organisations and with stakeholders. A longstanding definition of a stakeholder is “any group or individual who can affect or is affected by the achievement of the organisation’s objectives” (Freeman, 2010, p.vi). The emergence of NPM saw the recognition of users of public services as customers or clients (Bovaird, 2007). The use of the terms ‘client’, ‘customer’ and ‘stakeholder’ are rhetorical devices by which to explain a cohort of the public that managers in public sector agencies interact with in varying ways, based on public needs and service availability, and through various means including formal and informal mechanisms.

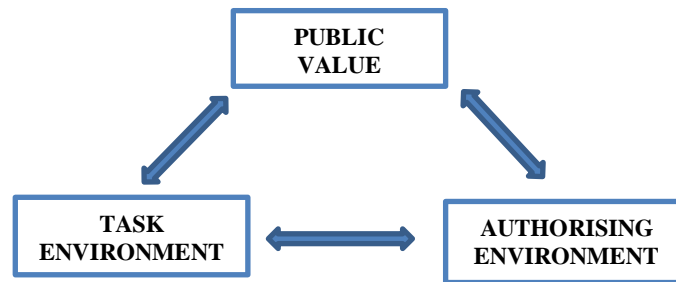
Regardless of how they are defined, the focus of NPM and of NPG on being more responsive to the individual needs of stakeholders and clients consequently requires an understanding of those needs, in order to address client or customer service requirements (Alford, 2002; Alford & Speed, 2006; Moore, 1994, 1995; Peters & Pierre, 1998). Across the last few years there has been a divergence to a consideration of public value that influences and informs these public/private interactions. One public management framework that considers the role of stakeholders in the implementation of public policy is based on a theory of public value (Moore, 1994, 1995).

This public value theory is distinguished from NPM by a focus on relationships rather than results; multiple performance objectives beyond efficiency; customer responsiveness to factors such as service outputs and trust; and a pragmatic approach to service delivery that is based on alternatives rather than defined options (O’Flynn, 2007). These public value concepts have been taken up by others including Alford (2002), and have generated some public debate (Rhodes & Wanna, 2008). Public value theory has been the subject of increased interest and scrutiny, with some identifying the efficacy of the theory as integral to networked governance (O’Flynn, 2007; Stoker, 2006) and others questioning its validity in diverse public management environments (Rhodes & Wanna, 2008).

Moore’s (1994, 1995) theory of public value is however a consideration when examining the nature of transactions by public sector agencies in their engagement with clients. In these transactions, Moore (1995) suggests what managers “must seek to satisfy is the collective aspirations expressed through the political process - not the aims

of professionals, not the wishes of clients. They must become agents of collective rather than individually defined purposes” (p. 302). The concept of public value is influenced by the “authorising environment” (Moore, 1995, p. 120) to provide legitimacy and support to decision-makers. This environment comprises the stakeholders, customers and citizens who exert pressure and influence in defining the value of transactions delivered within the public environment. The ‘authorising environment’ is a component of the strategic triangle, an organisational strategy adapted specifically to the public sector (Moore, 1994, 1995). See figure 2.2 below:

Figure 2.2 Strategic triangle



Adapted from Moore, (2006), p.97.

As reflected in the above figure, the strategic triangle casts the overall mission or purpose of the organisation in terms of public value. In order to sustain commitment from stakeholders to the public value, sources of support and legitimacy are tapped through the authorising environment. The internal task environment is organised to facilitate the achievement of the declared objective (Moore, 1995, 2006). If any of these are not aligned in purpose, then ensuing tensions create the potential for strategic failure.

However, there are differing views on the influence of stakeholders. Some argue that a stakeholder approach to engaging with a segment of the market is a strategic management tool to boost firm performance (Freeman & McVea, 2001), whilst others point to the emergence of a social policy role for stakeholders that goes beyond that of shareholder value (Alford, 2002; Moore, 1995). Literature on stakeholder engagement links such engagement activity to governance requirements as an example of corporate

responsibility and accountability, by involving affected stakeholders and acting in their interests if they are to achieve strategic success (Freeman, 2010; Freeman & McVea, 2001). Conversely other literature posits that engaging with diverse or differing stakeholders is a means of facilitating mutually advantageous relationships based on concerns of common good (Bryson, Crosby & Stone, 2006). The interests of stakeholders can be an important factor in shaping strategic decision-making processes, with not only public scrutiny of such decisions, but also an expectation to engage with stakeholders in achieving social aims (Bryson & Bromily, 1993). Regardless of intent, the outcome of failing to engage with stakeholders in the strategy process can produce poor results (Bryson & Bromily, 1993; Nutt, 1999).

Whilst there are considerations within the regulatory space that engagement with stakeholders is based on coercion and therefore there is an unequal power relationship, the more recent application of the NPG paradigm of collaboration emphasises enabling rather than coercing. As Salamon (2002) points out, the new governance emphasis is on “collaboration and enablement rather than hierarchy and control” (p.vii). Accordingly, this shift from control to collaboration is not just in developing policy but also in implementing policy, using a range of incentives to encourage compliance (Salamon, 2002). The removal of control or coercion does however shift the relationship between the regulator and the regulated entity to one of choice, rather than compulsion.

According to Alford and O’Flynn (2009), eliciting the support of regulated entities to voluntarily engage in compliance actions rather than being coerced appeals to intrinsic motivators such as social responsibility. NPG also appeals to public value considerations through improving public service delivery by participatory and collaborative engagement with stakeholders, including the deployment of new tools in solving problems (Torfing & Triantafillou, 2013). Notwithstanding these benefits, Koppenjan and Koliba (2013) suggest that because of the fragmented nature of NPG as an umbrella concept, claims of public value as a result of such engagements may be exaggerated (p. 1). This overstated notion of benefit to stakeholders reflects the contradictory nature of strategic decision-making, particularly in the regulatory context. The ambiguous nature of risk-based regulation is reflected in the expanding scope and complexity of problems regulators are expected to address in their decision-making

processes. This expansion includes increasing engagement with stakeholders. Such inclusion creates tensions in the decision-making process, as additional participants can bring their own predilections to the process. In doing so, these influences can open up decision-making to persuasion and coercion that deflects attention from identified problems and potential risks.

Some public management literature discerns that private sector characteristics such as delegation of accountability and a client centric focus can be accommodated within the public sector environment if inter-sectoral differences are identified and accommodated (Ferlie, 2006). Regulatory agencies operate with a legislated mandate whilst situated within broader public sector departments that set their strategic direction. Recognition of inter-sectoral differences may thus be of less consequence than intra-sectoral differences that influence the unfolding of strategic processes. As suggested by the literature, the transfer of some public sector wide features, such as client considerations and accountability, have specific implications for regulatory strategic decision-making processes.

Having explored aspects of the literature relating to the public management context, a further consideration of the literature now examines the translation of risk-based regulatory policy into strategies and actions, and the implications for decision-making in an environment of risk ambiguity and competing choice. As proposed at the end of the introduction on page 20 these choices include:

- what criteria to apply to identify risks that can differentiate them from the plethora of risks;
- having defined the risks, which ones to choose for attention;
- what from the array of potential approaches to the risk will ensure that it is removed or mitigated;
- from the resources available to the regulator, which resources are available to be allocated to the range of competing priorities;
- what options can be accessed to engage with those being regulated, and finally
- how to explain and defend those decisions that satisfy accountability requirements.

Differentiating and choosing risks for attention

The degree to which risk is predicated on harm or potential harm drives much of regulators' compliance and enforcement efforts. As seen from the literature on regulation, risk-based regulatory agencies such as safety, environment, public order and so on deal with potential harm, and therefore risk of harm. Regulators not only respond to incidents when harm has occurred, but also develop strategies to address, through prevention or deterrence, the potential for harm. Regulators sift through information when making decisions about compliance actions, and apply graduated approaches, including the use of various regulatory approaches (Freiberg, 2010; Hood, 1983) to the different modes of compliance response from the regulated entity. The process of decision-making requires assessing risks based on these compliance postures, and developing and applying suitable approaches using regulatory tools (Baldwin & Black, 2008; Bartel & Barclay, 2011; Braithwaite, 1997; Braithwaite, 1995; May & Wood, 2003). These approaches include applying penalties for a compliance breach as well as deciding on intervention actions designed to minimise or remove the potential for harm (Ayres & Braithwaite, 1992; Freiberg, 2010).

The challenge for regulators is that risk-based principles may be difficult to put into practice. This difficulty may be because of the large quantity and nebulous characteristic of risks, which can make the identification and subsequent prioritisation of those risks difficult (Freiberg, 2010; May, 2002). Additionally, the appetite of government and of stakeholders for risk is problematic, as there may not be an alignment between what the data is suggesting, what the public perceives to be risks, and what risks government is prepared to accommodate (Black, 2005; Black & Baldwin, 2012; Power, 2004). More particularly, interpretation of data to identify risks is not completely objective, given the role of values in such interpretation (Hood & Jones, 1996).

Such differing appreciation or comprehension of risk may influence the ability to implement a coherent risk-based approach to regulatory decision-making. Assessment of factors such as the capacity and capability of subjects of the regulators' compliance attention is dependent on the application of discretion. This is informed by

communication between the regulator and the regulated entity. However, a close relationship between these two parties brings its own complexities. These include discretion about the choice of tools based on discernment of the regulated entities' mode of behaviour and the perception of such engagements as reliably bringing about compliance (Black & Baldwin, 2010; Hutter, 1989; Hutter & Manning, 1990). A further consequence, albeit unintended, of targeting areas of risk is the potential for the creation of other risks (Graham & Wiener, 1995). By linking the prioritisation of risks with responsiveness to regulated entities when administering risk-based legislation, the spectre is raised, paradoxically, of inconsistency in decision-making, or even perceptions of regulatory capture (Johnstone, 1999; Makkai & Braithwaite, 2011) when engaging with regulated entities and other stakeholders.

Other noteworthy factors in implementing risk-based regulation include the unique attributes of each regulator, such as jurisdiction and administration (Black, 2002). These attributes can include the specific resources of the agency as well as the availability of tools. Access to relevant resources including budget, as well as a range of tools to enable tailoring of approaches to the problems, are necessary elements in addressing identified risks (Black, 2005; Freiberg, 2010). Operational considerations in implementing risk-based regulation also include access to reliable data that accurately provides information on risks in order to analyse and evaluate the probability and consequences of those risks. Data is primarily derived from operational information such as records of notifications, fines, intervention activities and breaches of the regulation gathered and stored by the regulator or the larger organisation to which the regulator may belong. A particular challenge for risk-based decision-making is the potential to focus on known risks, such as those reflected in operational data, and consequently not attend to hidden or emerging risks (Sparrow, 2000).

Additionally, the mechanistic nature of risk-based regulators' enforcement and compliance policies induces routinised approaches to enforcement and compliance actions (Pires, 2011). Such policies are defined by formal and often prescriptive guidance as to which actions to take, and which tools to apply. Hence decisions may be framed by what is prescribed, rather than encouraging a deeper analysis of the risk and consequently an identification of the most appropriate approaches to those problems.

Victoria Furthermore, the political environment creates an additional challenge for risk-based regulators in developing more systematic decision-making frameworks based on risk. Constant political pressure to respond to events as they occur, that may not in fact be representative of the most pressing risks, diverts regulators' attention to the immediacy of those events (Albury, 2005).

Risk-based regulators are not only required to demonstrate how they are reducing risks to society, they are also increasingly being asked to design interventions that meet public governance accountability and transparency requirements (OECD, 2010; Productivity Commission, 2011). They are also expected to be innovative in designing regulatory strategies, and engage with clients in developing and delivering those strategies (Macrory, 2006). Regulatory innovation is fundamental to the 'reinventing government' debate (Osborne & Gaebler, 1992). Innovation occupies a pivotal role in debates on regulatory reform played out through agencies such as the OECD (Black, Lodge & Thatcher, 2005). Regulatory innovation can be linked to changes in regulatory regimes, such as the development of smart regulation (Gunningham & Grabosky, 1998) which connects a range of stockholders in developing regulatory policy. However, innovation is also reflected in organisational processes, the "use of new solutions to address old problems, or new solutions to address 'new'...problems" that influence regulatory outcomes (Black et al, 2005, p.4). These innovations entail developing technical and management approaches rather than routinised and mechanistic enforcement approaches (Pires, 2011).

In the public sector, innovation can be driven by pressures on budgeting that create funding deficiencies as well as technological changes that create expectations, and opportunities, for service delivery (Stewart-Weeks & Kastle, 2015). In this respect, there are three types of public sector innovation: (1) in response to crises, (2) led by top managers and (3) initiated by frontline operatives (Borins, 2000). From a study of public sector innovation awards in the United States, a surprising 48 percent of innovations were from middle managers and front-line staff. These innovators, it was discovered, were "proactively solving problems before they became crises; [by] taking opposition seriously and attempting to deal with it forthrightly through persuasion or accommodation, rather than through power politics; [by] developing a clear vision of an

innovation and staying focused on that vision; and [by] objectively evaluating an innovation to see if it is working” (Borins, 2000, p.506). Innovation thus requires factors not traditionally ascribed to the operational modes of regulators, such as a focus on identifying problems, dealing with diverse and dissenting views and evaluating proposed approaches to identified problems. These operational factors however increasingly define the approaches taken by risk-based regulators in dealing with risk.

Approaches to dealing with risks

Risk-based approaches assume the application of discretion at various levels, so that regulators can both design and implement compliance strategies in a manner that ensures maximum effectiveness. Discretion is the exercise of choice by regulators in deciding whether or not to apply formal enforcement strategies. Debates around the exercise of discretion originally focused on the potential for unconstrained decision-making (Lipsky, 2010). However more recently the debate has recognised situational aspects of discretion, including the role of managers in framing street level actions (Evans & Harris, 2004; Howe, Hardy & Cooney, 2013). There is a growing body of literature, particularly from studies in Brazil, which appraise the use of discretion as a positive rather than negative aspect of regulatory decision-making, based on innovation and open-ended pursuits of approaches (Coslovsky, 2011; Coslovsky, Pires & Silbey, 2011; Pires, 2011, 2013).

Risk-based regulatory policy is characterised by systemised decision-making frameworks and procedures that prioritise regulatory activities and strategically deploy regulators’ enforcement and compliance resources (Black, 2002; Black & Baldwin, 2010). The objective of risk-based regulation is not only to maximise compliance outcomes, but in doing so reduce the regulatory burden on affected parties. Risk-based approaches also promise consistency and transparency in decision-making. However, the literature suggests that such approaches generate a number of challenges for regulators, including the need to be clear about the justification for tolerating levels of risk when targeting scarce resources to prioritised risk areas.

Underlying assumptions in applying risk-based principles to strategic decision-making are that such application provides a more rational basis for assigning attention and resources, predicated on dealing with risks rather than on traditional programs and habitual responses. This risk-based approach has the attendant consequence of expanding the forms of discretion that come into play and increasingly places focus on outcomes such as risk-mitigation and behavioural change. Given selection and application of risk criteria may be hidden within the administrative arrangements set up to manage these processes, there are accountability issues in regulatory decision-making processes (Baldwin & Black, 2008; Black & Baldwin, 2010).

A feature of policy implementation identified from the literature is the exercise of discretion, whereby street level bureaucrats deal with complicated situations in the field, and as a coping strategy diverge from set organisational policy by making situational choices that in effect become public policy (Hupe & Hill, 2007; Lipsky, 2010). Much of the debate around discretion has been informed by the early work of Lipsky (2010) in the 1980s on street level discretion. Subsequently the concept of discretion in implementing public policy has been much discussed. As encapsulated in a review of the literature, this discussion ranges from arguments that discretion is necessary to achieve policy outcomes, to opposing arguments that discretion, or too much discretion, can threaten the policy goals of organisations (Barrett, 2004). This debate has been weighted to the contextual consideration of discretion as a source of tension between policy goals and street level policy implementation.

However, discretion also occurs in making strategic management choices about the development of options which frame street level actions. In the debate on discretion, the role of managers in this context is often ignored. There has commensurately been a bifurcated aspect to the treatment of discretion in the literature, which places public managers' decision-making and street level implementation in separate contexts. Where management decision-making is addressed it is often framed around standard or routinised processes as a means of controlling discretion. Subsequent research has provided a more current and interdependent context. This research includes studies by Pires (2011) of regulatory decision-making, who suggests that the prevailing view of

bureaucratic management discretion in daily decision-making processes has been seen as peripheral by many researchers (p.44).

As discussed, one characteristic of NPM is devolution of authority, including giving managers more autonomy and discretion in decision-making (Boyne, 2002; Nutt, 2000). Many studies of process strategy have focused solely on the role in the planning process of top managers (Jarzabkowski & Wilson, 2002; Samra-Fredericks, 2005) or on middle managers (Balogun, 2003; Currie, 1999; Floyd & Wooldridge, 1992). Where multiple management level involvement in strategic decision-making processes is studied, these findings are largely theoretical and based on roles (Floyd & Lane, 2000) or patterns of action (Jarzabkowski & Spee, 2009). However, other researchers have identified that the strategic process comprises a range of formal and informal interactions by top managers and middle managers that shape strategic direction, thus recognising the critical role of middle managers in providing input and influencing strategic direction (Balogun, 2003; Floyd & Wooldridge, 1992; Hoon, 2007).

Using a strategy-as-practice perspective in a single case study of a public sector agency to look at interactions of top managers and middle managers in strategy implementation, Hoon (2007) suggests that the process is not one that can be attributed to specific management levels, as strategies emerge from the interaction of decision-making at multiple levels of management (p.924). Regner's (2003) single in-depth case study on micro-level strategic processes also identified that multiple levels of management resulted in differing but interdependent strategy activities (p.79). Decision-making and the exercise of discretion can be undertaken by any of the participants in the strategic process, thus highlighting the focus in this study on three levels of management involved in decision-making.

Fundamentals of effective decision-making

Implementing traditional 'response to harm' based interventions (investigations in response to incidents or complaints) usually deal only with those who inflict harm rather than those who might possibly or probably cause it (Freiberg, 2010). However, applying a range of enforcement tools in response to a particular incident or complaint can be

inadequate as it may not be effective in the longer term in deterring or preventing future harm (Sparrow, 2000, 2008). Risk-based regulation is in effect problem-based regulation, with regulators seeking out problems and designing approaches to deal with them before they escalate or even emerge (Black, 2005). Risk-based decision-making processes are therefore predicated on organisational frameworks and systems that prioritise and allocate resources where needed (Black, 2005). Accordingly, in addition to responding to complex aspects of the regulatory regime, there are challenges for regulators in coming to terms with a number of operational difficulties. Most significantly, those challenges arise because of the intricate nature of strategic decision-making processes which are based on operational choices across a range of ever increasing and complex options.

The way in which risk-based regulators operate is also influenced by the manner in which risk regimes are organised. These arrangements depend on what Hood, Rothstein and Baldwin (2010) identify as regime *context* and regime *content*. Regime context is the types of risks; public attitudes towards risks, including the influence of stakeholders, and the size or extent to which risk can be tolerated. Regime content is the structure of the regime, including cost and distribution of resources and complexity of the organisation, and style, reflected in a regulator's adherence to rules and the extent to which they exhibit 'zealotry' for policy positions. Examples of zealotry include 'nit-picking' about compliance requirements or enforcing 'by the book' (May, 2007). What Hood et al (2010) refer to as regulatory 'zealotry' is in many respects mitigated within regulatory agencies by the existence of operational policies and procedures such as internal manuals for compliance actions such as the issue of improvement and penalty notices. Additionally, broader policies such as documented compliance and enforcement policies and the existence of customer service charters are publicly available from regulators' websites. These documents detail the regulator's approach to compliance and enforcement, as well as policies setting out the regulator's commitment to public sector wide standards of behaviour and service.

Since the early 1980s the concept of government activities and deployment of resources has been identified as variants or combinations of a limited set of basic instruments or 'tools' (Hood, 1983). The concept of a tool or instrument of government action is

however a broad one. Landry and Varone (2005) suggest that “a policy instrument, or a tool, is a means of intervention by which governments attempt to induce individuals and groups to make decisions and take actions compatible with public policies” (p.107-108). The tools that governments use can be described broadly as firstly, instruments that observe and take in information from the external environment, and secondly, tools used to influence those being regulated (Hood, 1983). It is through these instruments and tools that the broad capability of any control system that acts as an interface between government and society is enabled (Hood, 1983).

However, the choice of tools can be influenced by political characteristics, including their visibility to the public, how effectively they are targeted and the degree to which they rely on existing administrative processes (Peters, 2002). The inclusion of multiple parties in policy making and strategy implementation also has implications for regulatory decision-makers on the use and choice of such tools. The application of risk-based tools is not only seen as aiding policy choices, but also in assisting decision-making. Although where parties external to the regulator are involved in the processes of decision-making there is the potential for widely differing expectations and experiences of the use of these tools (May, 2002).

There are a number of regulatory tools available to the regulator to assist in achieving compliance outcomes. Such regulatory tools may include the availability of information and education products and services as well as incentives to encourage and assist compliance; licensing, registration, certification and accreditation of third parties to facilitate compliance; inspection or investigation and other intervention protocols and procedures such as fines and notices to correct and deter non-compliance; and prosecution of serious infringements (Freiberg, 2010; Salamon, 2002). These tools are generally framed within legislation and delivered in accordance with public policy that reflects community expectations of fairness and equity. As Sparrow (2000) points out, decisions as to which tools to use involves choices that reflect “goals of public value” and “as you carefully pick and choose what you do and how you do it, reconcile your pursuit of effectiveness with the values of justice and equality” (p.28). In regulatory decision-making, the criteria by which to identify risks for attention is as problematic as the choice of approaches to reduce or remove those risks.

In a risk-based regulatory environment the development of strategies involves identifying risks through a range of sources of intelligence, and then designing targeted interventions and using discretion in utilising a broad range of compliance tools (Freiberg, 2010; Salamon, 2002) rather than simply applying a standard regulatory approach from the regulators' 'toolbox' to address the identified regulatory problem (Sparrow, 2000; Black, 2005). However, the use of these tools is commonly represented in the literature as part of discretionary front-line enforcement approaches taken by the regulatory agency rather than as an element of strategic decision-making. One exception in the literature is research by Coslovsky (2011), where he takes issue with literature that equates responsiveness to pre-programmed escalation such as that illustrated by the traditional regulatory strategy pyramid, and argues for a more pluralistic approach to problem-solving (p.70). This approach is not so much reliant on systemised processes but in partnership with 'allies' framing responses to identifying problems and developing tailored approaches using a variety of tools. Such use of tools is "contextual, deliberative and open-ended with regard to both means and ends...with tools limited only by the regulator's imagination and ability to recruit allies" (Coslovsky, 2011, p.84). Coslovsky (2011) proposes that this relational regulation approach is a more nuanced form of responsiveness that coexists with the traditional routinised forms of responsiveness within regulatory agencies (p.70).

Tools can also be strategic management tools, a concept which is also broad, and includes analytical frameworks, techniques and methodologies that assist managers in their strategic decision-making activities (Clark, 1997). These tools include various types of program logic that can assist in ascertaining the contribution of strategic decisions towards outcomes (Cooksy, Gill & Kelly, 2001). Examination of material from a number of Australian regulators' websites reveals such tools as systemised decision-making frameworks based on risk likelihood and consequence. These frameworks are based on a logic matrix for the tolerability of risk, and provide transparency about decisions regarding which risks require attention, and which to discount or to attenuate through the selective use of tools.

Allocation of resources and options for engagement

For risk-based regulatory agencies the strategic management process is neither linear nor fixed, as any strategy has to be flexible enough to accommodate not just changing political environments but also changing risk environments. Such risk-based preventative approaches that go ‘beyond compliance’ (Hopkins, 2007) have implications for the strategic management and deployment of the resources of regulatory agencies. There are differences in approaches between reactive decision-making and proactive decision-making. Reactive decisions are in response to identified breaches or non-compliance where standard approaches are employed, such as the issue of notices, withdrawal of approvals or the application of financial penalties. Proactive decisions are based on complex and in some cases unknown problems, and as a consequence of the changing risk environment in which such decisions are made, are more likely to be flexible and adaptable.

Managers in regulatory agencies responsible for administering social regulation can find it challenging to balance the discretionary options available to them. The consequences of not balancing flexibility and consistency in the choice and application of tools can result in loss of confidence in frontline staff, rigid enforcement approaches or disparity in enforcement actions (May, 2002). A risk-based approach to such preventative strategies requires particular skills beyond the traditional ‘command and control’ approach. This new set of skills enables the identification of discrete societal problems and the development of tailored approaches that go beyond cautious, routinised applications (Coslovsky, 2011).

There are important implications in relation to management practices in risk-based regulatory agencies and consequent frontline actions in reflecting policy outcomes (Pires, 2011). Through case comparisons in the area of labour inspection in Brazil, Pires (2011) recognised the role of managers in organising and influencing inspection work. He identifies two models, or approaches, to management in regulatory agencies that produces different strategies and outcomes. These models are based on NPM which prescribes specific and narrow goals with predetermined identification of risks, and a contrasting model, “Experimentalist Governance”, that is underpinned by sensitivity to

context and the development of more complex actions that are tailored to this specific context (Pires, 2011, p.43).

A number of factors come into play to enable a move away from these routinised approaches. The management of resources in the form of personnel skills and competencies is predicated on engaging more highly educated personnel, or upskilling existing personnel. These more skilled personnel can engage in compliance conversations with industry in applying risk-based principles, rather than taking the more traditional ‘command and control’ or ‘tick-box’ approach to compliance (Hopkins, 2007). Specific communication and interpersonal skills are needed in order to convey these complex messages. These skills can be differentiated as behavioural, comprising “analytical thinking; strategic thinking; communication; working and managing co-operatively/horizontally and initiative” and technical, comprising “instrument choice; compliance and enforcement and evaluation and performance management” (O’Toole, 2010, pp.1-2). These optimal behavioural as well as technical communication and interpersonal skills reflect the additional complexity that characterises risk-based regulatory interactions.

Such behavioural skills are not usually associated with compliance strategies of regulators. From the literature, compliance considerations have been primarily aligned to the enforcement style of front-line staff such as inspectors, or on responses of regulated entities, rather than the strategic approach of decision-makers. One seminal study of Australian regulatory agencies sought to characterise these strategic approaches. In a comparative study of senior officers of 96 Australian regulators, Grabosky and Braithwaite (1986) developed a typology of regulatory agencies based on nine styles of enforcement. This study however was a broad one, and according to the authors further studies would provide greater understanding of the ways in which policy outcomes are enabled through strategic approaches (Grabosky & Braithwaite, 1986, p.230).

The transition by regulators from a more traditional prescriptive approach to a risk-based approach can also require significant changes to the culture and operations of the regulator (Braithwaite, 2003, 2007). Over much of the 1990s the Australian Taxation

Office (ATO) had been the subject of extensive study as it adopted a responsive approach to regulation. A study of the translation of the regulatory strategy pyramid to operational practices in the ATO cautioned against making sweeping changes to the wholesale culture of the Tax Office, but instead implement central tenets of the model in small everyday practices (Hobson, 2001). A counter view of changes required were that they indeed were required to be wide ranging, encompassing not only cultural and organisational changes, but also changes on an individual level (Job and Honaker, 2001). To facilitate changes to different modes of thinking about how regulation is administered, staff needed to be “given the time and encouragement to practice the skills of responsive regulation, using story-telling, problem-solving, and the design of new methodological tools” (Job & Honaker, 2001, p.20). Enabling the development and implementation of responsive approaches also requires the creation of ‘slack’ to free up time from routinised aspects of the regulator’s job for other more consequential practices (Coslovsky, 2011) that includes engaging and creating alliances with others, including stakeholders, to achieve the desired outcomes.

Problem-solving

Given these operational issues around preventative approaches, regulatory agencies require a particular management approach and associated business processes that support the operational practicalities of implementing risk-based strategies and actions. One management approach for regulatory agencies in dealing with risk is the design of regulatory compliance interventions around problem orientation or problem-solving (Cherney, 1997; Goldstein, 1979; Sparrow, 2000). Applying problem-solving methods requires clear identification and analysis of problems, and the exercise of discretion in the development of tailored responses to those problems, using the various tools available to the regulator (Sparrow, 2000). Collaboration with a range of stakeholders in this process enables a unified purpose that results in better compliance outcomes (Sparrow, 2000, p.100). Problem-solving undertakes to move the regulator to a more sophisticated regulatory approach from the traditional investigation of incidents and complaints to a risk-based approach. This approach utilises a range of tools that comprise both incentives and sanctions, which appeal to other motivations such as social responsibility to reach the desired outcome (Alford & Speed, 2006).

Strategic decision-making processes that anchor regulatory strategy in identifying problems may be considered an effective means to address regulatory problems (Baldwin & Black, 2008; Sparrow, 2000). However, such a premise is not without its challenges in practice. One challenge is there is no prescription for the approach to be taken once a problem is identified. That is, there is no set of pre-defined actions or solutions to problems, and additionally there is an assumption that regulation can be unpacked into discernible problems for the attention of regulators at an operational level (Baldwin & Black, 2008, p.68). These concerns are allayed somewhat by the proposition that problems can be discerned from detectable risk patterns (Sparrow, 2000) which require use of intelligence, including data, in decision-making processes. The Australian New Zealand School of Government has for a number of years run *Managing Regulation, Enforcement and Compliance* executive workshops facilitated by Sparrow, which are well attended by regulators and framed around problem-solving methods. It is not apparent whether these principles have been adopted more generally by those regulators in their compliance strategies. However, from a review of regulators' websites the enforcement and compliance policies of some agencies specifically refer to this approach to decision-making.

Explaining and defending decisions

The adoption of private sector performance standards and measures into the public sector has led many western governments to focus on reducing the regulatory burden and using regulatory resources more efficiently and effectively (Hood, 1991; Hood, Rothstein & Baldwin, 2001). A focus on public sector governance arrangements turns attention also to the accountability of those in public sector agencies, including regulators, responsible for developing and implementing strategy (Pollitt & Hupe, 2011; Pollitt & Bouckaert, 2004). With devolution of authority, accountability of those engaged in the implementation of public policy has become increasingly important as a means of monitoring and controlling those agencies (Christensen & Laegreid, 2007, 2010). Regulatory agencies that fail to effectively administer structures, procedures and processes established to implement particular policy goals and strategies commensurately fail in managing their operational risks. In a review of accountability challenges across a number of regulatory regimes, May (2007) found that shortfalls in

accountability have the potential to undermine regulatory performance and compromise the professionalism of those responsible for implementation.

The management of risk is made more complex by greater levels of public scrutiny in relation to regulatory actions. Indeed, risks for social problems that are the subject of decision-making are risks to the regulated and broader community, and subsequently require responses framed around governance principles set by oversighting agencies. This distinctive turbulent nature of the public sector invites consideration of the efficacy of transferring private sector strategy arrangements without due regard to those unique aspects. According to Hendrick (2003), from her review of research on public organisations, a key distinguishing aspect for the public sector is the influence of stakeholders and oversight bodies. The influence by these bodies is predicated on the transparency of such arrangements, their representation of a citizen constituency and their accountability responsibilities (p.498-499). Risk-based regulators are not only required to demonstrate how they are reducing risks to society, they are also increasingly being asked to design strategies that meet public governance accountability and transparency requirements. Given this requirement, the interpretation of risk-based policy considerations into strategies and actions has implications for regulatory agencies' decision-making processes. As regulators move from enforcing prescriptive rules to managing risks by the application of discretion in identifying what risks to address from the multitude of extant risks, they are increasingly dealing with more ambiguities in their decision-making processes. They are also dealing with more scrutiny in relation to those processes.

In an environment of increasing attention on the accountability of regulators there is intensified scrutiny by "accountability forums" (Bovens, 2007, p.451). These forums require public sector organisations to explain and justify their actions. One of these accountability forums in Australia is the Productivity Commission. The Commission found that the ineffective use of the range of tools, processes and strategies by regulatory decision-makers can be costly to both the regulatory agency and to business. Specifically, the Commission pointed out in a 2011 report that "regulator practices can play a key role in compliance burdens, with scope apparent for improvement" (Productivity Commission, 2011, p.x). The report noted that "poor regulator practices

can discourage compliance, waste government resources and add to business costs and delays” (Productivity Commission, 2011, p.xiv). Notwithstanding these findings, the Commission also noted that such regulator practices “depend both on the framework in which regulators operate - including legislative requirements, regulators’ powers and any oversight arrangements - and the processes and strategies that regulators adopt within that framework” (Productivity Commission, 2011, p.135).

Despite this acknowledgement of many factors outside the control of regulators, decision-makers are required to not only administer the policy intentions of the legislation through effective decisions, but to do so in a way that is efficient, and in the process to be transparent and accountable for their strategic decisions (Black, 2002, 2005; Sparrow, 2000). Peters, Pierre & Randma-Liiv (2011) link accountability and decision-making by suggesting that not only should decisions be made, but that those decisions should be high quality. This quality is reflected in attributes of suitability, robustness, innovation and content. The link between accountability and decision-making highlights the extent to which such institutional arrangements facilitate or inhibit those strategic decision-making processes (Peters et al, 2011).

There are other ramifications for decision-makers exercising discretion in interpreting and translating harmonised risk-based policy approaches into strategy. One of these ramifications is, idiosyncratically, appearing to be inconsistent. Harmonisation is context specific. According to Majone (1999), harmonisation may mean the “creation of a single policy space out of a number of distinct jurisdictions. It can also mean the adoption of common policy goals or general principles that national governments can pursue by different strategies” (p.309). Whilst harmonisation has the appearance of simplicity and legal clarity it does not guarantee that the same rules applied in a multiplicity of situations will result in equal gains when the choice of methods is left to the discretion of the regulatory agency (Johnstone, 1999; Majone, 1999). Disparate decision-making processes influence perceptions of fairness and transparency by those impacted by the regulators’ decisions (Johnstone, 1999). Another perspective is that such arrangements can actually have positive results, such as leading to innovation (Brown, Furneaux & Allen, 2008).

Inclusion and accountability: expanding the risk environment

As previously discussed, one innovation risk-based regulatory agencies have pursued is predicated on engaging closely with a regulated entity to gain greater understanding of its characteristics in order to design more tailored approaches to compliance. Whilst the private sector looks at strategic placement on the basis of customers and competition - that is, the market environment, the risk-based regulator deals with both the outside risk environment, that is, what the regulator wants to change, as well as the political environment (Moore, 1995). Unlike public sector agencies that deliver services, regulatory and enforcement agencies deliver obligations. In response to expectations of public value, public sector agencies are increasingly reaching out to their client base to form relationships to accomplish their public purpose (Alford & Speed, 2006; Moore, 1995). Promoting and encouraging compliance by devising and framing appropriate solutions that are not only effective, but also acceptable to the regulated entity, requires regulators to understand the unique characteristics of industries or organisations that are the subject of compliance actions (Pires, 2013, p.624). This close engagement however is not without its own risks.

One of the risks for regulators in engaging in compliance discussions with regulated entities is that of regulatory capture (Hutter, 1989; Johnstone, 1999; Makkai & Braithwaite, 2011). These risks are more pronounced in regimes such as risk-based regulation where there is a high degree of discretion in the administration of that regulation (Grabosky & Braithwaite, 1986). Engagements that are designed to foster cooperation may in effect 'capture' the regulator and lead to undue influence by regulated entities in decision-making processes or outcomes. There are three distinct forms of regulatory capture. These forms are delineated by behaviours such as "identification with industry; sympathy with the particular problems that regulated firms confront in meeting standards, and absence of toughness" (Makkai & Braithwaite, 2011, p.173). Such behaviours are most likely to arise in agencies that have a close relationship with those they regulate, such as by negotiating compliance or by providing technical assistance to assist in compliance (Grabosky & Braithwaite, 1986). Additionally, such instances of regulatory capture may arise where there is inadequate accountability or an absence of transparency.

A website review of investigations by anti-corruption agencies across Australia reveals instances where officials of regulatory agencies have been involved in corruption or misconduct. Notwithstanding a focus on the deliberate actions of those involved in corruption or misconduct, there is also a risk of the *perception* of regulatory officials being compromised when undertaking ‘benign’ compliance engagements with the regulated entity (Grabosky & Braithwaite, 1986). Despite these risks there are benefits in engaging with or forming alliances with regulated entities to achieve compliance outcomes. A relationship based on the sharing of knowledge is of mutual benefit in the design of compliance approaches (Coslovsky, 2011; Pires, 2011).

A critical aspect of this relationship is the building of trust. Braithwaite and Makkai (1994) found in their longitudinal study of 410 Australian nursing homes that where the managers of those facilities felt they were perceived as trustworthy, there are improved compliance outcomes (p.1). Similarly, in a study of 2,292 taxpayers accused of tax avoidance by the Australian Taxation Office, Murphy (2004) found that trust is a variable that requires consideration by regulatory agencies in effectively managing non-compliance. Whilst regulatory capture is a potential risk to the regulatory agency in engaging more closely with the regulated community, the benefits and indeed expectations of such engagement outweigh this potential risk, particularly when there is a relationship based on trust.

A closer look at decision-making in risk-based regulatory agencies

The preceding insights reveal various aspects of decision-making from literature that touches, in varying degrees, on decision-making in regulatory agencies. Aspects discussed in the preceding parts of this chapter that impact on decision-making processes in regulatory agencies include public value, customer service and devolution of authority, including the exercise of discretion. From the literature, further attributes include the coercive nature of client services, public value and risk considerations which frame stakeholder engagement. Other aspects include particular and wide-ranging accountability considerations based on governance requirements and the use of evidence.

Decision-making processes incorporate a range of complexities for regulators embracing a risk-based approach in the design of preventative programs of work. This section now examines literature from two studies that specifically explore decision-making processes based on preventative actions within risk-based regulatory agencies. Research by Pires (2011) and Coslovsky (2011), based on studies of Brazilian regulators, have provided recent perspectives. It should be noted that a recent Australian study of a labour inspectorate found that the relatively new regulator, whilst primarily exhibiting a rule based approach to compliance, also exhibited elements of management approaches that accepted, and even encouraged, experimentation and adaptation by inspectors (Howe, Hardy, & Cooney, 2013). However, the emergent nature of these approaches meant they were not as advanced as those identified by the two studies of Brazilian regulators and whilst noteworthy are not as applicable to this study.

Pires' (2011) research in 2006 into methods of controlling inspector discretion in regulatory agencies investigated the impact of two management practices on frontline enforcement activities (p.44). He identified two models, or approaches, to management in regulatory agencies. These models were based on NPM, and prescribed specific and narrow goals with predetermined identification of risks, and a contrasting model, "Experimentalist Governance", underpinned by development of more nuanced actions that are tailored to appreciation of specific contexts. His focus is on strategies adopted by management to "control the discretion and performance of street level officers", such as "predefined performance targets versus open-ended processes; constant revision of goals, performance measures and inspection procedures; individual versus team work" (Pires, 2011, p.62).

The two models examined reflected different work processes and outcomes, with those operating under more open ended discretionary processes exhibiting heightened motivation and problem-solving skills. Pires (2011) found by focusing on sector-wide activities rather than routinised inspections that relied on such things as checklists, the regulator was required to seek information about the underlying causes of non-compliance. This enabled those implementing strategic decisions based on identified regulatory problems to "trace through the causal chain to determine whether there is a problem or obstacle at any stage of the compliance process" (Pires, 2011, p.61).

In considering the use of tools in developing approaches to address complex problems identified in the construction sector, Pires (2011) found not only did inspectors collaborate with aspects of the sector to deal with problems, but collaboration also led to solutions combining legal, managerial, or technological aspects (p.61). In practice, these approaches utilised a combination of approaches that went beyond the standard range of regulatory tools such as notices and fines, and resulted in an effective solution to the identified problem. The effectiveness of the implementation of the solution, that comprised a number of wide-ranging tasks by contributing parties, was defined not solely by outcomes such as in one of Pires' cases the reduction of electrocutions on construction sites. Effectiveness was also defined by success criteria based on project information such as successful meetings with the parties involved, that included a range of both internal and external stakeholders (Pires, 2011, p.57). The resultant solution was an example of "a dialogic process of root-cause analysis and problem solving dedicated to each of the controversial and poorly understood items of regulation" (Pires, 2011, p.59).

Pires provides a comprehensive analysis of the results of decision-making within regulatory agencies, but notwithstanding these valuable insights, Pires' study does not provide particular insights into nuanced decision-making by managers that defines and directs inspectors' work effort and approach. Whilst his research focused primarily on the activities and outcomes of such work, rather than the strategic decision-making processes, he nonetheless noted that future research on decision-making within regulatory agencies and the influence on frontline actions would contribute to better understanding the outcomes of such activities (Pires, 2011, p.60).

Coslovsky's (2011) research into prosecutors' exercise of discretion in the Brazilian labour and environmental regulatory agency (the Ministerio Publico) shows the development of two discrete approaches. The first approach reflects responsiveness as pre-programmed escalation. It is based on a "sizeable faction of prosecutors [that] embrace[s] a procedural vision of justice and adopts a cautious, routinized, ritualistic, and reactive case-processing approach" (Coslovsky, 2011, p.84). The second approach was undertaken by "prosecutors who resist the pressures of conformity and strive to use their professional status, public legitimacy, and legal powers to identify important

societal problems and solve them” (Coslovsky, 2011, p.84). The latter approach is specific to the context of the societal problem, and requires the acquisition of problem specific knowledge and the inclusion of a range of willing allies in the search for an agreed solution (Coslovsky, 2011). Such decision-making needs constraint free, supportive management structures for strategic decision-making rather than reactive formal structures, although these can and should exist in conjunction with those more formal structures (Coslovsky, 2011). These perspectives highlight the complexity in applying integrated strategies to regulation that do not conform to traditional processes.

In their consideration of aspects of stakeholder engagement, both Coslovsky and Pires identify a number of mechanisms by which decision-makers establish relationships, or what Coslovsky terms “alliances” (Coslovsky, 2011, p.81) and Pires calls “partners” (Pires, 2011, p.60) to achieve mutually agreed compliance outcomes. These relationships have the benefit, through such collaborative arrangements, of building positive expectations of the regulator by stakeholders (Pires, 2011) as well as developing joint capacity (Coslovsky, 2011). The way in which regulators develop and implement strategic decisions is consequently not a linear process. Optimally, it is a process of reciprocal interaction, involving consultation and re-consultation, validation and re-validation across strategising and operational management processes (Coslovsky, 2011; Pires, 2011). It is also open-ended, without the constraints of programmed outcomes, to facilitate the development and implementation of agreed approaches with those stakeholders.

Table 2.1 below sets out perspectives from these two pivotal studies and links these perspectives to other relevant aspects of decision-making identified from the literature review, and which contribute to this study:

Table 2.1 Strategic decision-making perspectives

Perspectives from selected literature on decision-making in regulatory agencies	Associated consideration of aspects of decision-making for this study
Progress reports against goals based on quantifiable and non-quantifiable measures (Pires, 2011, p.60)	Accountability by regulators of the actions and goals in the strategic decision process
Interactions between regulator and relevant stakeholders (Pires, 2011, p.60) Establishment of alliances, both formal and informal, to strengthen capacity (Coslovsky, 2011, p.80-81) Development of creative solutions in collaboration with internal units and external partners (Pires, 2011, p.60)	Use of formal and informal engagement mechanisms across the continuum of strategic planning and implementation of strategic decisions
Use of diagnostic information derived from databases as well as engagement with stakeholders (Pires, 2011, p.60) Purposeful action to strengthen joint capacity (Coslovsky, 2011, p.81)	Use of evidence from various sources to select areas for attention in the development of strategic decisions
Sector or sub-sector wide operations rather than workplace specific actions (Pires, 2011, p.60) Formation of project teams organised around themes, sectors or problems (Pires, p.48)	Targeting of specific areas for attention that mobilise resources around problems
Tools customised to sector (Pires, 2011, p.60) Identification of important problems (cases) and development of innovative and context specific solutions (Coslovsky, 2011, p.70)	Tailoring approaches to the specifics of the identified problem
Creating slack to free up time from routinized aspects of the job for other more consequential practices (Coslovsky, 2011, p.79) Efficient mobilisation of minimum resources to achieve goals (Pires, 2011, p.60)	Operating management activities that allocate resources from reactive to preventative approaches
Formalised and informal arrangements to train and support in skills requirements (Coslovsky, 2011, p.79-80)	Skills and competencies of those involved in the implementation of strategic decisions

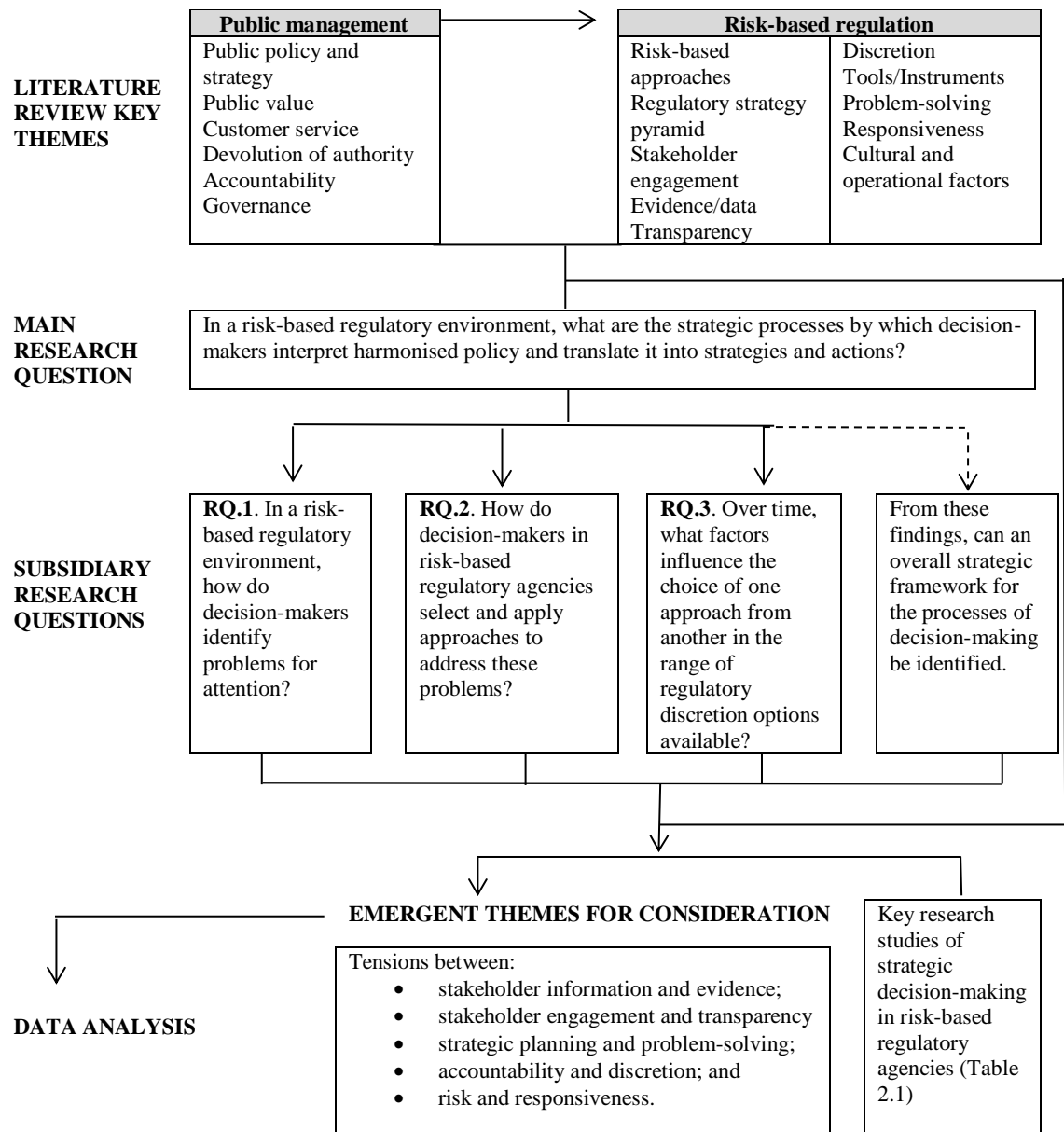
As shown from the table above, the definitive perspectives extrapolated from the review of literature, including the pivotal studies by Pires (2011) and Coslovsky (2011) are, firstly, performance reports reframed from activity based to outcomes focused provide a particular insight on accountability in the actions and goals of strategic decisions. Secondly, engaging with stakeholders to not only identify problems, including providing evidence, but to also develop approaches to those problems, goes beyond mere communication or consultation. Thirdly, targeting based on fine tuning those areas for attention to the level where problems can be clearly identified and articulated, enables the development of tailored approaches to problems in an open-ended way. Fourthly, the ability to mobilise sufficient resources, including extricating them from the routinised aspects of enforcement and compliance, provides the means to develop

and deploy strategic decisions. Finally, there is a specific set of skills and competencies that is required for applying problem-solving methods, which are not always part of the formal skills development processes of the regulatory agency.

Conclusion

This literature review commenced with an exploration of relevant aspects of regulation, specifically risk-based regulation, often identified as a sub-set of responsive regulation. It then explored the literature and attendant debate on public management and associated policy implementation through strategic management processes of organisations. The review also discussed elements of discretionary decision-making, aspects of which were identified as comprising problem-solving methods. The literature on stakeholder engagement, particularly NPM and NPG, revealed unique attributes of creating and maintaining alliances. The review of literature also focused on studies by Pires (2011) and Coslovsky (2011), two of the few studies that touch on strategic processes by which decision-makers select and apply approaches to regulatory problems, and from which a number of perspectives on decision-making in regulatory agencies were discerned. The literature review trail of these themes and perspectives are depicted in figure 2.3 below:

Figure 2.3 Literature review trail of themes



As depicted above, the review of literature on public management and associated policy implementation including strategic management processes, identified a number of themes that impact on decision-making processes within regulatory agencies. These themes include public value, customer service, devolution of authority, accountability and governance. Strategic planning requires organisations to articulate and establish goals and objectives; conduct environmental scanning for opportunities and threats; assess their capabilities and make critical connections between those organisational

capabilities and environmental opportunities and threats (Hendrick, 2003, citing Andrews, 1980). Despite a debate over the years about the effectiveness of strategic planning, it is well embedded in most public sector organisations. More recently, the examination of strategic planning in generating strategic decisions has highlighted the relevance of implementation processes in successfully deploying those decisions (Hickson, 2004).

A number of additional themes on regulatory theory and implementation of regulatory policy emerged from the review of literature on risk-based regulation and discretion. Current regulatory theory includes responsive regulation (Ayres & Braithwaite, 1992), smart regulation (Gunningham & Grabosky, 1998) and risk-based regulation (Baldwin & Cave, 1999; Black, 2005), that places focus on the implications of risk on the decision-making processes of risk-based regulators. Some commentators however have challenged regulators to design regulatory approaches around problem-solving methods (Black, 2005; Sparrow, 2000). Some of the literature reveals the adoption of problem-solving principles as a means of discretionary decision-making (Pires, 2011; Coslovsky, 2011). In addition, regulatory decision-making studies by Pires (2011) and Coslovsky (2011) provide a range of operational characteristics that shape such decision-making (Table 2.1).

The translation by decision-makers of risk-based policy into strategies and actions changes focus from the actions of frontline officers to strategic decision-making processes within regulatory agencies. The processes of making strategic decisions include the use of discretion. The discretionary role of management in these processes is not confined to top management, but permeates strategic decision-making processes from top management through to operating management. Such discretionary decision-making has been identified as also comprising problem-solving methods. These insights suggest that these processes, being very much derived from changes in public management proposed by NPM and NPG, have generated a set of conditions for regulatory decision-making that create a number of additional complexities.

Considering the literature on changes in public management, NPM is attributed to reframing approaches to strategy implementation and decision-making by public managers. For those decision-makers operating in a regulatory environment these complexities and accountabilities result in tensions in their decision-making processes, in part because of the multi-faceted and pluralistic nature of these processes. Some of these approaches such as NPM, and in particular, NPG, have highlighted stakeholder engagement as a key attribute in decision-making processes. By engaging in compliance conversations with regulated entities, the regulator can better understand the unique characteristics of that entity. Despite some implications such as perceptions of inconsistency, or of regulatory capture, these stakeholder engagements assist the regulator in devising and implementing more tailored, and indeed palatable, solutions to regulatory problems (Coslovsky, 2011; Pires, 2011).

The literature also demonstrates that the interaction of NPG principles of stakeholder engagement with risk-based approaches has particular implications for regulators interpreting harmonised regulatory policy and translating it into strategies and actions through their decision-making processes. The use of objective data to identify risk provides an evidence base to decisions. However, under the principles of NPG there is now additional evidence derived from information provided by stakeholders. Dealing with this information can create added complexities in decision-making processes in accommodating often conflicting perspectives. These complexities translate into tensions between being responsive to stakeholder input into the identification of problems and drawing on a range of additional risk-based evidence that supports decision-making. On a broader level, there are also inherent tensions between harmonised policy arrangements and individual regulatory agency responsiveness to stakeholders. Such multi-level making of strategy presents a risk in harmonisation disintegrating as these pressures to accommodate harmonisation and diversity cascade through the layers of decision-making processes.

As discussed previously in this chapter, current regulatory strategy theories encompass a range of models and approaches. The regulatory strategy pyramid highlights the fluidity of administrative and regulatory practice to support responsive regulation (Ayres & Braithwaite, 1992). Risk-based regulation takes the concept of responsive

regulation further, with the notion that regulators should not only be responsive to the different compliance postures of regulated entities in deploying regulatory tools and strategies, but that risk should be an underpinning regulatory principle with a broad reach, encompassing decision-making processes and the context in which those decisions are undertaken.

Whilst risk-based approaches have their particular strengths, there are a number of particular challenges and difficulties in the processes of decision-making (Baldwin & Black, 2008; Black & Baldwin, 2010). One of these challenges is a duality to the premise of risk on which strategic decisions are based. Firstly, development of strategic decisions is in response to identified risks that may be difficult to fully define. Secondly, processes of developing and implementing decisions framed around innovative approaches to compliance may in themselves be risky, as they may not fit customary and familiar enforcement approaches. By targeting resources to prioritised risk areas, regulators need to be clear about their justification for tolerating levels of risk, particularly as risk-based systems may focus on known risks and therefore fail to identify emerging risks.

In addition, there are significant resources that need to be deployed in order to analyse and respond to risks. There are also considerable issues around accountability, given processes for selecting and applying risk criteria may be hidden within administrative arrangements, including stakeholder engagement, set up to manage these processes. The processes of making strategic decisions include the use of discretion, which permeates decision-making processes from top management through to operating management. Insights from the literature suggest these processes, being very much derived from changes in public management, have generated a set of conditions for regulatory decision-making which create a number of additional complexities.

Decision-making processes are often defined by aspirational principles of increased transparency and accountability; more informed and meaningful interactions with regulated entities and more effective customer engagement. Despite the range of literature on public policy and strategy, in reviewing the literature it emerged there was very little evidence of the internal decision-making arrangements of regulatory

agencies, that is, of policy interpretation that gives effect to strategy and actions, and what actually occurs, and why, in those strategic decision-making processes. Notwithstanding the adoption of harmonised risk-based regulation across many regulatory regimes there is limited commonality of forms of decision-making. The literature review thus evidences that very little is known about the processes of interpreting risk-based policy and translating into strategies and actions, particularly in a harmonised environment that places expectations of consistency on decision-making processes. This thesis examines these processes as undertaken by decision-makers in four such regulatory agencies. The examination of decision-making is represented in figure 2.4 below, with the understudied area shown by broken lines:

Figure 2.4: Understudied area



As depicted in Figure 2.4 above, decision-making processes that occur within regulatory agencies in interpreting risk-based regulation and translating it into strategies and actions is underrepresented in the literature. Thus, not much is known about the decision-making processes that underpin such interpretation and translation. There is even less known about decision-making by regulators in the area of harmonised risk-based policy. Where such decision-making is examined, there is little distinction between the actions of inspectors and the strategies that underpin those decisions. This study is distinctive in that it studies the ‘black box’ of strategic decision-making in risk-based regulatory agencies as policy approaches are interpreted and translated into regulatory agency strategies and actions. From the literature, such decision-making presents as potential tensions in the integration of risk-based approaches and NPG principles. In addressing the understudied area of the translation of regulatory policy into strategies and actions, this study will benefit regulators and the academic community by providing greater understanding of the ways in which harmonised policy is enacted through strategic decision-making processes.

The literature review commenced with the research problem of how decision-makers in a risk-based regulatory environment make choices in interpreting policy and translating those choices into strategies and actions. From this consideration of regulatory decision-making, three specific questions were developed from the review of literature that asked:

1. In a risk-based regulatory environment, how do decision-makers identify problems for attention?
2. How do decision-makers in risk-based regulatory agencies select and apply approaches to address these problems?
3. Over time, what factors influence the choice of one approach from another in the range of regulatory discretion options available?

A further consideration in addressing these questions is whether an overall strategic framework of strategic decision-making by risk-based regulators can be identified from the research. The following chapter details the research approach to this study.

CHAPTER 3: RESEARCH APPROACH

Introduction

Previous chapters highlighted that little is known of how, in a risk-based regulatory environment, harmonised policy is translated into strategies and actions. Despite the adoption of harmonised risk-based regulation across many regulatory regimes, there is limited evidence of the internal decision-making arrangements of risk-based regulatory agencies. This thesis examines these processes as undertaken by decision-makers at three levels of management in four such regulatory agencies. To gain an understanding of how these decision makers identify problems for attention, how they select and apply approaches to address these problems, and to identify factors that over time influence the choice of one approach from another in the range of regulatory discretion options, a research approach based primarily on qualitative data gathering methods over a period of time has been employed.

The purpose of this chapter is to present and justify the research approach and explain the methods used to collect and analyse data. It also provides details of how the research was conducted, and discusses ethical issues arising from the conduct of the research. As the research contributes to strategy-as-practice this chapter includes an explanation of this concept.

Overview of the research approach

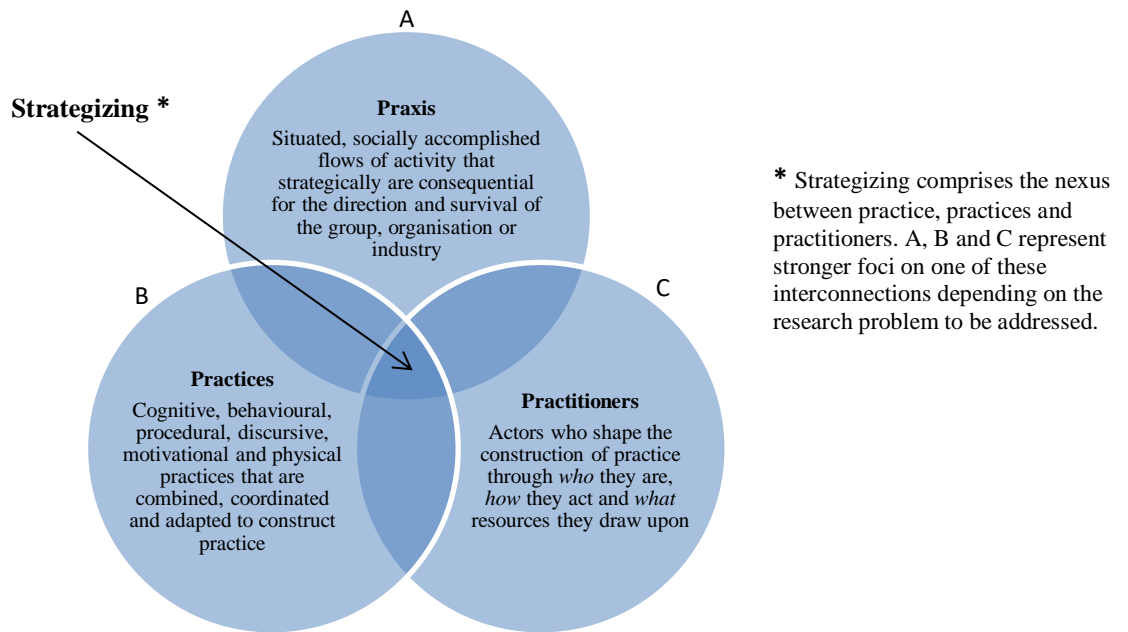
The research involved concurrent studies across four Australian work health and safety regulators over two discrete phases. The strength of this approach is a comparative analysis of findings to isolate and highlight patterns and variations in the strategic decision-making processes being investigated. Pettigrew (1997) set out a “statement of theory of method for conducting processual research” and posited “five internally consistent guiding assumptions” when undertaking process research (p.340). These guiding assumptions are:

- embeddedness, studying processes across a number of levels of analysis;
 - temporal interconnectedness, studying processes in past, present and future time;
 - a role in explanation for context and action;
 - a search for holistic rather than linear explanations of process; and
 - a need to link process analysis to the location and explanation of outcomes
- (Pettigrew, 1997)

This research into regulators' strategic decision-making processes reflects Pettigrew's (1997) suggested approach to conducting processual research. Firstly, strategic processes were studied across three distinct levels of analysis, being strategic practices at jurisdictional, management and operational levels. Secondly, processes had temporal interconnectedness, with data collected longitudinally in two phases over an eighteen-month period that encompassed two planning years, as well as a retrospective analysis of the preceding planning year. Thirdly and fourthly, both jurisdictional context and regulatory agency actions were analysed initially as individual studies of the four regulatory agencies then as cross comparison of findings as part of searching for holistic descriptions of decision-making processes. Finally, the analysis of the strategic decision-making process, including the presentation of a schematic of decision-making elements, links to the explanation of the outcomes of the process.

Strategy-as-practice is concerned with the practice of strategising, including the development and implementation of strategy through organisational processes. The strategy-as-practice perspective is not centred on any particular theoretical frame or method, based as it is on an empirical inquiry around the doing of strategy. Whittington (2006) provides a framework for the practice of strategy that incorporates concepts of praxis, practice and practitioners, which he proposes "link(s) together different subsets of the three core elements, according to the particular task at hand, while at the same time acknowledging their ultimate membership in an integrated whole" (p.620). Jarzabkowski, Balogun and Seidl (2007) have drawn out these concepts (see figure 3.1 below) and provide a "conceptual framework that underpins and may be used to link some of the key questions within a strategy-as-practice research agenda" (p.10).

Figure 3.1: Strategy-as-practice framework



Based on Jarzabkowski et al (2007), p.11.

As demonstrated in the figure above, this strategy-as-practice framework comprises practitioners (roles and activities of actors involved in strategising), praxis (the tools and methods of strategy making) and practice (how strategy work takes place). Strategy-as-practice has moved research focus from the work of the whole organisation (or what strategic decisions are undertaken) to that of the individual, or individual units (or how organisational strategy emerges) within the organisation (Jarzabkowski et al, 2007). Despite being a relatively new concept, or perhaps because of it, there are some varying and sometimes conflicting positions regarding strategy-as-practice, which may in part derive from its genesis in strategy process thinking and in part from the use of the term ‘practice’ in various philosophical and theoretical publications across numerous disciplines (Eisenhardt & Zbaracki, 1992). However, one of the challenges for strategy-as-practice research is that with its strong focus on empirical detail, such studies may lack an outcome, or what Jarzabkowski et al (2007) call the “so what” problem (p.14).

Based on the established strategy-as-practice typology of praxis, practice and practitioners, Jarzabkowski and Spee (2009) provide an expanded typology of nine domains in which these concepts are adopted in a number of theoretical and empirical

studies. This typology identifies three levels of praxis, being micro, or individual or group level; meso, or organisation or sub organisation level and macro, or institutional level. The typology also incorporates three types of practitioner, being individual actor within organisation; aggregate actor within organisation, based on position or function and extra organisation aggregate actor, defined by actors external to the organisation (Jarzabkowski & Spee, 2009). From this consideration of relevant strategy-as-practice literature, Jarzabkowski and Spee (2009) discerned that comparatively little attention had been given to the role of middle managers as aggregate actors at the organisational, or meso level.

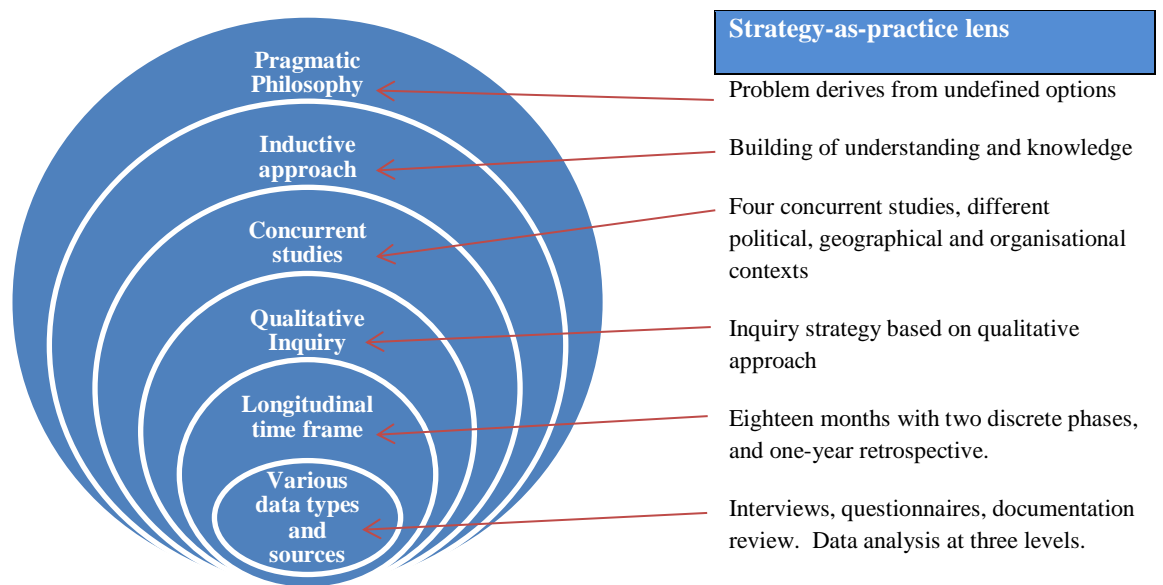
This study, which looks at how strategic decisions are developed and implemented, contributes to this understudied area of strategy research. The focus of this study is primarily through praxis, that is, how strategic work takes place at the organisational, or meso, level. On this basis, the interview and questionnaire instruments were designed to draw out the specific actions of the various management levels, with a focus on middle managers involved in strategising. This study provides detailed analyses of how strategic decisions are undertaken in regulatory agencies and what factors impact those decision-making processes.

Ultimately, according to Jarzabkowski, et al (2007) “outcomes for strategy-as-practice research need to be related to the definition of strategy as a situated, socially accomplished flow of activity that has consequential outcomes for the direction and/or survival of the group, organisation or industry” (p.14). Jarzabkowski and Spee (2009) also identify five categories of outcomes found within their review of strategy-as-practice research, and from these categories distil two types of outcomes well suited to the nature of strategy-as-practice research. These are (1) detailed analysis of what strategists do which results in particular outcomes, and (2) explanations of how differences in strategising explains variations in the consequent outcomes. These two proposed outcomes were front of mind when designing this research.

Justification for the research methodology and paradigm

Using a strategy-as-practice lens, this research adopted a predominantly inductive approach as a means of addressing the questions of how decision-makers identify problems for attention, how they select and apply approaches to address these problems and what factors influence choice of these approaches. The methodology supported the focus of the research, which was to explore and detail micro-processes of strategy making and implementation of strategic decisions in risk-based regulatory agencies. The overall research approach is depicted in figure 3.2 below.

Figure 3.2: Research approach ‘onion’



Adapted from Saunders Lewis and Thornhill, 2009, p.108.

The following discussion of the approach taken for this research is based on the research ‘onion’ depicted above (Saunders, Lewis & Thornhill, 2009). This discussion presents the justification for the research approach and paradigms including considerations that underpinned the choices of data collection and analysis.

Pragmatic philosophy

The research problem led to the adoption of a pragmatic approach to the research, the objective of which was to develop knowledge about regulators' strategic decision-making processes. The pragmatic inquiry approach arose from the problem of undefined options for individual regulators in deciding which tools, processes and strategies to implement following the adoption of a consistent legislative framework. Practice theory and pragmatism set the broad directions for this research into the 'doing' of strategy (Pettigrew, 1997; Jarzabkowski et al, 2007) and for a learning approach to regulatory theory (Job, Stout and Smith, 2007; Wright & Head, 2009).

Pragmatism argues that the research question guides the adoption of the researcher's epistemology, ontology and axiology (Burrell & Morgan, 2005; Saunders et al, 2009). A pragmatic approach is often problem oriented, concerned to provide practical solutions to practical problems. In such an approach either or both observable phenomena and subjective meanings can provide acceptable knowledge dependent upon the research question (Burrell & Morgan, 2005). By assuming a pragmatic philosophical stance and applying a strategy-as-practice perspective to this research, the objective was to develop knowledge that is academically rigorous and relevant to practice. Both pragmatism and strategy-as-practice provide a lens by which to 'zoom in' and examine details of decision-making processes and 'zoom out' to examine the environment in which those processes take place.

Inductive approach

The nature of the research problem, which seeks to explore how risk-based regulators interpret harmonised policy and translate it into strategies and actions, led to an inductive approach to analysis of the data. Inductive analysis "begins with specific observations and builds towards general patterns. Categories or dimensions of analysis emerge from open-ended observations as the enquirer comes to understand patterns that exist in the phenomenon being investigated" (Patton, 2002, p.56). The building of understanding and knowledge meant that iterative qualitative data collection, coding and categorisation took place at the same time that concepts emerged. This iterative

approach enabled details of strategic decision-making in complex risk-based regulatory agencies to be revealed. Consistent with an inductive approach, the raw data, that is the actual words of the interviewed participants, was examined and re-examined for emerging themes that then formed the initial codes (Boyatzis, 1998). The description of coding qualitative data as thematic analysis, which can be understood from the two perspectives of *seeing* and *seeing as* (Boyatzis, 1998) effectively describes the data analysis process of this research: drawing out the *what* to allow the *so what* to emerge (Jarzabkowski et al, 2007).

Concurrent studies

Because the research was based on providing insights into micro-processes of strategising in regulatory agencies, an examination of decision-making processes taking place within a discrete type of regulatory agency formed the design of the study. The research question required that more than one regulatory agency was included in the research in order to compare both within and between regulatory agencies and to provide rich qualitative data suitable for induction and development of knowledge. This approach was taken in order to examine and describe the way that tools, processes and strategies are deployed in decision-making processes to implement a uniform risk-based regulatory policy.

Taking a strategy-as-practice lens to the research question required an in-depth analysis of the micro-processes of strategic decision-making as undertaken by three levels of management involved in those processes. The aim of the research was to provide detailed observations about the processes and outcomes of strategic decision-making in each of the regulatory agencies across multiple organisational levels. Therefore, it was imperative that observations be obtained from multiple informants in order to compare and contrast different settings relating to the implementation of strategic decisions, and thus provide a firmer basis to generalisations about decision-making processes (Silverman, 2010). These perspectives were from top, middle and operating managers (Floyd & Lane, 2000). This approach created multiple components within each of the four regulators that participated in the study.

Qualitative inquiry

In arguing for a more activity based view of strategy, Johnson, Melin and Whittington (2003) acknowledge the significant contribution that strategy process research has made to the strategy discipline. They suggest that the major contributions of the process school are opening the “black box” of the organisation, with strategy now recognised as integral to organisational dynamics rather than detached from it; “humanizing” the field by “capturing the micro-aspects of strategic actions made by human beings” and the “legitimization of small sample in-depth studies” (Johnson et al, 2003, p.11). A qualitative inquiry approach was thus particularly suited to the in-depth studies of the management levels in the four participating regulators in order to capture micro aspects of strategic decision-making.

The choice of a qualitative inquiry approach is supported by strategy-as-practice scholars, given their departure from conventional perspectives of strategy as something organisations *have*, to focus on what individuals in organisations *do* (Johnson et al, 2007). Numerous strategy-as-practice research studies have utilised a qualitative inquiry approach, including studies of the role of middle managers in sense-making in relation to organisational restructuring (Balogun & Johnson, 2004), the role of board members in strategising (Hendry, Kiel & Nicholson, 2010), the role of strategy workshops in strategy development from a managerial perspective (Hodgkinson, Whittington, Johnson & Schwarz, 2006) and an examination of the characteristics of strategy meetings (Jarzabkowski and Seidl, 2008).

The nature of the research questions, that move from *what* decision-makers do to *how*, requires a close and detailed examination of how decision-makers translate policy into strategies and actions, and are thus eminently suited to taking a qualitative inquiry approach. The qualitative inquiry approach supported the requirement of the study to describe decision-making processes to the depth and detail required to draw out these findings, and to do so “holistically and in context” (Patton, 2002, p.55). Qualitative inquiry also provided flexibility in the process of undertaking the research. This flexibility was necessary to adapt the research interventions to the changing nature of the context in which the research was undertaken, through responding to the

circumstances across the two phases of the research of the regulators being studied (Cassell & Symon, 1994).

Longitudinal time frame

Research on processes of decision-making should not only redefine decisions as “events that punctuate and modify the flow of issues” (Langley, Mintzberg, Pitcher, Posada & Saint-Macary, 1995, p.276), but trace those issues forward, not decisions back as does much of the research on decision-making. This tracing not only supports a viable means of progressing research and development of theory, it also ensures that perceptions are not biased by knowledge of impacts of decisions on those issues (Langley et al, 1995). Accordingly, this research was undertaken as a longitudinal study of issues (the identification of regulatory problems), punctuated by decisions that involved contemporaneous data collection as well as the collection of data retrospective to the study period. The research was conducted as multiple (four) studies of regulatory agencies undertaken concurrently across two discrete time periods, or phases, over an eighteen-month period encompassing two planning years.

This longitudinal time frame reflected the dynamic nature of the strategic planning processes being investigated and also allowed for attrition in the sample sizes (Lewis, 2003). As identified by Lewis (2003) “the follow-up stage can be designed to allow intensive study of particular groups or issues, returning to a purposively selected sub-sample of those interviewed at the first stage...[in order to] shape the follow-up sample around events or experiences that have occurred since the first stage fieldwork” (p.55). The selection of the samples for follow-up interviews in phase two of the data collection was a replication of the original participants in phase one, to allow the complex nature of strategic decision-making processes to be investigated.

Various data types and sources

Data for this research was collected appropriate to the purpose of the research, using a variety of methods, including semi structured face-to-face and telephone interviews at two defined management levels; structured self-completion questionnaires at a third management level and desk based review of documents. Documents included

participating regulators' policy and strategic planning documents and reports which were reviewed at each phase as context for the interviews.

The role of managers in strategy processes has elicited attention from some researchers. By distilling a number of empirical studies Floyd and Lane (2000) identified ten managerial functions (that have subsequently been utilised in many empirical studies), encompassing the roles and behaviours of top managers, middle managers and operating managers in strategy processes. Their framework was adopted in the data collection methodology for this research as it supported the defined roles of these managers in strategic decision-making process, albeit recognising that people take on various roles in these processes. These management roles did not necessarily coincide with formal organisation structure charts. The identification of relevant position holders for interview was based on their respective roles in the strategic decision process. This identification of roles was made from the documentation review of project and program plans and confirmed by the nominated contact person for each of the regulators. The primary sources of data for the research were interviews with top and middle managers, the format of which was set questions in a set format, with specific probes, but which were open-ended. This format ensures that "each interviewee gets asked the same questions - the same stimuli - in the same way and the same order, including standard probes" (Patton, 2002, p.344).

The expeditious use of various data types that comprise different perspectives is particularly suited to yielding opinions, knowledge, rich description and context that generate "useful and credible findings" (Patton, 2002, p.5). Additionally, the collection of documentary information not only provided historical context for the study but also corroborated and informed the qualitative data collected (Yin, 2009, Eisenhardt & Graebner, 2007). The type of data and justification for the use of the data is set out in table 3.1 below:

Table 3.1 Data sources and justification

<i>Data source</i>	<i>Justification</i>
Semi-structured interviews with top management.	To identify the high level strategic planning processes that result in the definition of regulatory problems that require concentrated and coordinated approaches by the regulator.
Semi-structured interviews with middle management.	To identify how the decisions from the planning and review processes are/have been implemented, and in particular the use of discretion in the design of approaches to defined regulatory problems.
Self-completed electronic questionnaires administered to operating managers, that combined open and closed questions.	To assess the detail of the implementation of the strategic decisions, including the choice of, and rationale for, the utilisation of various tools. Also, to compare perspectives of these choices and rationales against responses from top and middle managers.
Analysis of regulator's policy and planning documents.	To provide evidence, as well as corroborate and inform the qualitative data collected in the two phases on the research.
Analysis of external publicly available documents.	To provide evidence, including context, for the research.

As demonstrated above, semi-structured interviews produced data on decision-making processes from the perspective of the two management levels involved in those processes. The survey of operating managers provided specific detail from those responsible for implementing strategic decisions as well as corroborating the data from middle and top managers. The review of internal and external documentation also corroborated the interview and questionnaire responses as well as providing specific evidence.

Epistemology

As detailed in the explanation of and justification for the research, a pragmatic approach was taken to the research, an approach that argues that the “most important determinant of the epistemology, ontology and axiology you adopt is the research question” (Saunders et al, 2009, p.109). The nature of the research questions that search for explanation of how policy is translated into strategy through the regulators’ decision-making processes leads to the use of both “observable phenomena and subjective meanings” to “provide acceptable knowledge dependent on the research question” (Saunders et al, 2009, p.119). A categorisation of social science paradigms which can be used in business and management research to generate fresh insights into real life issues and problems comprise functionalist, interpretive, radical humanist and radical

structuralist (Saunders et al, 2009). A functionalist paradigm, that is, a “rational explanation of why a particular organisational problem is occurring and developing a set of recommendations” is the paradigm within which most business and management research operates (Saunders et al, 2009, p.119). The key assumption of this paradigm is that organisations are rational entities, in which rational explanations offer solutions to rational problems. By adopting a pragmatic philosophy and a functionalist paradigm and applying a strategy-as-practice lens to this research, the aim was to develop knowledge that is academically rigorous as well as being relevant to practice.

The choice of research method is as much an epistemological point as it is a methodological one (Stewart, 2012). As succinctly pointed out by Stewart: “[W]e may have hunches about what is important, drawn from the literature” (p.72). In expanding on her example of how strategic initiatives might play out in different kinds of organisations, Stewart (2012) points to an iterative process of examining implementation that is framed around such research as a process, “with the outcome [the conclusion] simply being the point at which we stop” (p.72). This process of honing in on a better understanding of the world requires a degree of self-consciousness including a conscious understanding of values that the researcher may bring to the role (Saunders et al, 2009). The role of the researcher in qualitative research where interviews are a primary source of data can therefore be a significant element of the research (Cassell & Symon, 1994). It is particularly important that this aspect of the role of the researcher is now discussed in this section of the chapter, as this provides an opportunity to evaluate this role in relation to the collection and interpretation of the data.

The researcher’s background is in regulation, specifically work health and safety regulation, and until two years prior to the commencement of the research had been employed at a senior management level for a number of years by one of the work health and safety regulators that participated in the study. During this period strategy implementation was engaged with on a theoretical level, whilst daily involved in practical aspects of operational implementation. Unquestionably, therefore, the researcher’s prior experience influenced the research at the outset. However, the processes of designing the research included undertaking a comprehensive literature

review on both subject matters and research methodology. This review informed the ultimate design and delivery of the research.

The nature of the research design reflects the epistemological assumption that the researcher interacts, and indeed may influence those being researched (Saunders et al, 2009). As detailed previously, this research was a search for meaning, and consequently the researcher had a close and interactive role with the subjects of the research. The extent to which the researcher should reveal information about themselves to their informants has been a subject of some debate across the research community (Legard, Keegan & Ward, 2003). Whilst there is some support for doing so, this can be problematic as the provision of information by the researcher, including personal details, can be a barrier to obtaining open responses from participants, and thus unduly influences the process (Legard et al, 2003). In the case of this research, details about the researcher's employment history with a work health and safety regulator were not generally volunteered to informants. However, given the pre-existing association between the researcher and the organisations being studied, one of them an employment relationship, one of the ways in which the influence of the researcher was minimised was through close attention to the interview instruments.

Data collection procedures

Introduction

The research commenced with a formal written request in April 2012 to the chair of the Heads of Workplace Safety Authorities (HWSA). HWSA is an independent body comprising the senior executives of Australian and New Zealand workplace health and safety regulatory agencies. The letter provided an outline of the proposed research and requested the participation of those member regulators from Australia. Five of the potential total of eight Australian regulators subsequently agreed to be approached, with one later declining to be involved in the research. The remaining four regulators all had formally committed to the implementation of the umbrella work health and safety legislation and thus were at comparable levels of adoption for the purposes of the research.

Participant recruitment and selection

An organisation participation information sheet was provided to each of the chief executives of the participating regulators. The information sheet detailed the research focus, interview and questionnaire requirements, confidentiality and other ethical arrangements as well as benefits to participants (Appendix 1). This information sheet also included a consent form to be signed by the chief executive or nominated representative and returned to the researcher. A contact person from each of the four regulators was subsequently nominated to liaise with the researcher to facilitate arrangements for visits to the regulatory agencies and the collection of data. Arrangements included locating and providing requested documentation; identifying relevant staff members from the three nominated management levels; coordinating interviews and arranging distribution of the online questionnaires.

Participation was voluntary with their informed consent obtained from each participant. There was no difficulty in gaining access to the two levels of interview informants and none of the proposed informants declined to be interviewed. Each individual interview and questionnaire participant was provided with an information sheet setting out relevant information including ethical and confidentiality controls (Appendix 2 and Appendix 3). Verbal consent was confirmed and recorded at the beginning of each interview. As the questionnaire participants were not identifiable, consent was assumed through completion and submission of the online questionnaire. Participants were given an option to opt out of the questionnaire if they so desired. Interviews were recorded by audiotape and transcribed by a commercial transcription service.

Sample selection

Sample selection was considered in relation to the research questions and objectives (Patton, 2002). As the research question was based on the processes and practices of decision-making, the sample was drawn from those who had information about those processes and practices (Cassell & Symon, 1994). These participants represented top management, middle management and operating management levels as identified by Floyd & Lane (2000).

Participants were selected for interview on the basis of their operational roles and level of responsibility as well as their specific knowledge and expertise relating to the matter being investigated. Top managers included in the sample were identified as being responsible for development of strategic plans including managing and monitoring the planning processes. Middle managers included in the sample were identified as being responsible for strategic decision planning, resource allocation, monitoring and control. Operating managers included in the sample were involved in implementing strategic decisions through approved action plans. The sampling technique resulted in three levels of management of each of the four regulators involved in decision-making being interviewed, or surveyed through a questionnaire. The sample size thus represented a logical relationship between the sample selection technique and the focus of the research (Saunders et al, 2009). In order for the managers in these groups to be representative of strategic decision-making processes only those identified from the documentation analysis involved in the development or implementation of specified projects, or strategic decisions, were included in the sample. Such sampling ensured informational redundancy, as no new information would emerge from the data beyond this sample (Saunders et al, 2009).

The purposive (or non-probability) heterogeneous approach taken to sampling was in order to draw on as many different perspectives as possible within the timeframe of the research. For most non-probability sampling techniques Saunders et al (2009) observed:

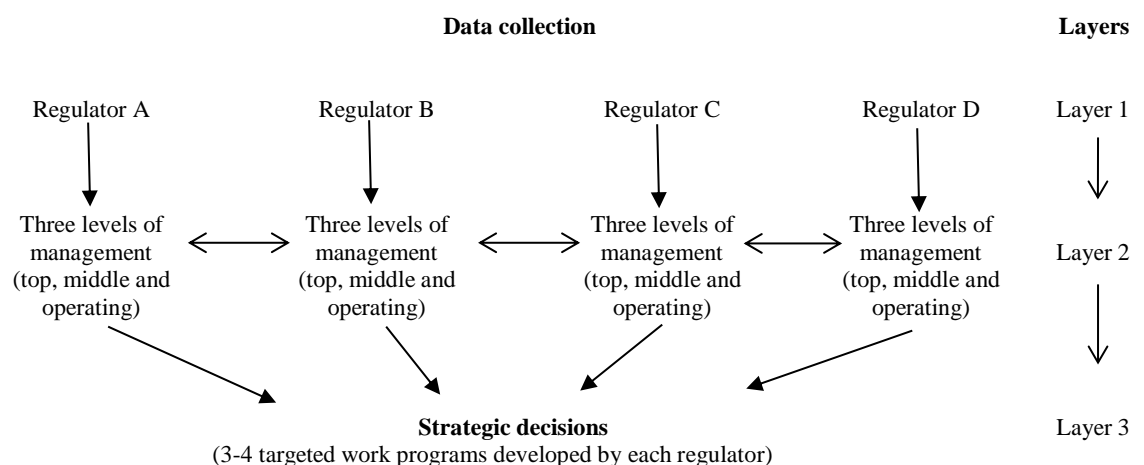
the issue of sample size is ambiguous and, unlike probability sampling, there are no rules...[and that the sample size is dependent on]...what you need to find out, what will be useful, what will have credibility, and what can be done within your available resources. (p.233-234)

A purposive heterogeneous sampling approach to the collection of data enabled the researcher to describe and explain the key themes that can be observed (Saunders et al, 2009). This approach to sampling enabled aggregation of data, that is, the collation of detailed data into comprehensive and in-depth information about decision-making processes from the four participating regulators (Patton, 2002).

Longitudinal data collection

The research involved one year of retrospective and one and a half year of contemporaneous data collection. Data were collected in two discrete phases, over an eighteen-month period encompassing two planning years. The first phase was from March to July 2013, and the second phase was from April to July 2014. The aim of phase one of the research was to ascertain how the regulators, through their operational and business unit planning processes and implementation activities, interpreted issues and applied discretion to address the strategic priorities identified through the corporate strategic planning process. The focus for the second phase was to investigate the alignment of stated actions (contained within the business unit/operational strategic plans) with what had actually been undertaken in the planning period being reviewed. That is, to ascertain congruence of actions with stated aims and outcomes. Current and proposed actions were also discussed. The longitudinal nature of the research meant that informants were generally interviewed twice across the period of the research, providing an opportunity to develop rapport and trust with the researcher. This trust was demonstrated through providing each informant with a transcript of the interview to their secure email address, and responding promptly to any request for changes or to clarifications. The framework for the collection of data is shown in figure 3.3 below:

Figure 3.3: Data collection framework



Based on Patton, 2002

As displayed above, the data collection in the two phases of the research involved multiple processes, or layers, being firstly the analysis of relevant strategic, planning and other documentation relating to the four work health and safety regulators that agreed to participate in the research (layer 1). Within these regulatory agencies participants in decision-making processes formed another layer that informed the study through data from interviews and questionnaires with the three levels of management within the four regulatory agencies (layer 2). These management levels are top, middle and operating management personnel. These participants were connected through the analysis of data, which revealed similar and contrasting themes.

Even though each of the regulatory agencies had adopted harmonised work health and safety approaches, this study looked not only for similarities, but also for differences in their decision-making processes. As depicted in layer 2 of figure 3.3 above, the connection of the three levels of top, middle and operating management enabled comparison of decision-making both within and between the four regulatory agencies. The collection and analysis of data from respondents placed within their own institutional settings supported this comparison, and produced rich data to compare both similarities and differences in decision-making processes within and between those regulatory agencies.

A number of strategic decisions (layer 3) were chosen from the analysis of documents undertaken prior to conducting the interviews, as indicative of the flow of work in which strategy is made. Strategic decisions that resulted from decision-making processes were discrete programs of work able to be identified from planning and other documentation. This choice required that strategic decisions (i) reflected the use of information/evidence; (ii) included multifunction/intra agency participation, and (iii) were representative of the agency's strategic decision-making processes. Strategic decisions varied in maturity ranging from under development to nearing completion.

Interviews, questionnaires and documents

Data for this research were collected using a variety of methods, including semi-structured face-to-face and telephone interviews at two defined management levels; structured self-completion questionnaires at a third management level and desk based analysis of documents.

Interviews

The primary source of data for the research was forty-four interviews with top and middle managers in each of the four regulatory agencies. Interviews with respondents in regulator A were conducted with two top managers and three middle managers in phase one of the research, and with two top managers and five middle managers in phase two. All of the five middle managers interviewed in phase two had not been interviewed previously. Interviews with respondents in regulator B were conducted with two top managers and three middle managers in phase one and with two top managers and with three middle managers in phase two. One top manager and two of the three middle managers interviewed in phase two had not been interviewed previously. Similarly, interviews with respondents in regulator C were conducted with two top managers and three middle managers in phase one of the research, and with two top managers and with three middle managers in phase two. Both top managers and two of the three middle managers interviewed in phase two were not interviewed previously. Interviews with respondents in regulator D were conducted with two top managers and three middle managers in phase one of the research, and with two top managers and with five middle managers in phase two. One of the top managers and two of the five middle managers interviewed in phase two had not been interviewed previously. These changes to top and middle manager positions between phases one and two reflected institutional changes to roles and responsibilities for the administration of strategic decisions. Table 3.2 below sets out the distribution of the top and middle manager interviews.

Table 3.2 Distribution of top and middle manager interviews

	Phase one		Phase two		Total
	Top manager	Middle manager	Top manager	Middle manager	
Regulator A	2	3	2	5	12
Regulator B	2	3	2	3	10
Regulator C	2	3	2	3	10
Regulator D	2	3	2	5	12
Total	8	12	8	16	44

Top manager interviews

In both phases, top managers were interviewed first before conducting middle manager interviews. The top managers identified for interview were responsible for developing strategic plans including setting parameters, and managing and monitoring planning processes. Some position holders also authorised and monitored approved work programs developed from strategic decisions. Interviews were arranged by the nominated contact person from the regulator, with an hour allocated for each interview. Actual interview times ranged from thirty to sixty minutes. In phase one, six of the eight interviews took place in a secure allocated room at the regulator's head office. The remaining interviews took place via telephone. Due to logistical matters including travel to various states and territories for interviews in phase two, four of the eight interviews were conducted by telephone, with four in-person interviews conducted at the regulator's head office. Interview times ranged from thirty to forty minutes.

In phase one a number of semi structured open-ended questions were asked of the top managers, prefaced by a number of introductory and background questions (Appendix 4). The open-ended questions covered the top manager's explanation of the regulator's business strategy and key priority areas, the criteria and mechanism by which strategic decisions were made and an explanation of how strategic decisions were being implemented, including any influence of the *National Compliance and Enforcement Policy*. Given its primacy in underpinning the legislative framework, a specific question was also asked of the respondents' understanding of risk-based regulation. In phase two, the focus of the interviews was to elicit the alignment of the regulatory agencies' strategy and key priority areas identified in phase one with current strategy and priority areas and identify where any changes were made and why. The interview script was

based on phase one questions with some modification to reflect the progress of strategic decisions (Appendix 5).

Middle manager interviews

The next series of interviews was with middle managers. These interviews were arranged by the nominated contact person from the regulator, generally following scheduled interviews with top managers. One hour was allocated for each interview, with actual interview times ranging from forty-five minutes to an hour and a quarter. In phase one of the research, eleven of the interviews took place in a secure allocated room at the regulator's head office, and one interview was conducted by telephone due to the unavailability of the relevant middle manager at the location at that time. In phase two, due to logistical concerns including travel to various states and territories for interviews and the unavailability of some identified middle managers at the time of the field visits, three of the sixteen scheduled interviews were conducted by telephone. The other thirteen in-person interviews were conducted at each of the regulator's head office.

The purpose of the interviews with middle managers in phase one was to identify how operational decisions from planning and review processes had been actioned, and in particular the use of discretion in the design of approaches to defined regulatory problems (Appendix 6). Middle managers also were also asked to explain the use of the *National Compliance and Enforcement Policy* in the overall process as well as questions relating to challenges and success factors in implementing strategic decisions. As with top managers, they were asked a question regarding their understanding of risk-based regulation.

In phase two of the research middle managers were in effect asked to tell the 'story' of each decision, particularly in terms of content and process, and specifically to elaborate on any changes made since phase one (Appendix 7). In a number of cases the middle manager position had changed and the incumbent had not been previously interviewed. In those instances, some of the questions from phase one were asked of respondents, including their understanding of risk-based regulation, an explanation of how the

strategic decision was being implemented and any influence of the *National Compliance and Enforcement Policy* on strategic decisions.

Questionnaires

Once all the interviews with middle managers were completed a questionnaire was administered electronically to staff involved in implementing strategic decisions through approved action plans (Appendix 8). This staging of the questionnaire was to ensure, from the information obtained from interviews with top and middle managers, that questionnaire participants were appropriately identified as participating in strategic decisions. The questionnaire was distributed to those staff engaged in implementing strategic decisions, based on the definition of the role of operating managers as reacting to information (Floyd and Lane, 2000). The distribution of questionnaires was thus on the basis that those invited to participate should have a role that involved co-ordinating aspects of the implementation of strategic decisions, including supervising or directing other staff involved in implementation of those decisions. The questionnaire was then distributed in each of the regulators by a contact nominated by the head of that regulatory agency.

The purpose of the questionnaire was to ascertain from those survey participants the extent of their involvement on the basis of workload, as well as the level of congruence with statements made by top and middle managers relating to use of evidence and deployment of tools. Information was also sought on levels of importance for those operating managers of aspects of the strategic decision-making process. Those staff members were not made known to the researcher as the questionnaire was distributed internally to individual participants by the relevant participating agency which had legitimate access to individuals' name and email addresses. Where sensitive data is being sought, such as responses to management decisions, people are more willing to answer these sorts of questions using an online survey, as opposed to researcher conducted surveys where privacy issues may affect reliability (Tourangeau & Smith, 1996).

The questionnaire was accessed by a link in the individual respondent's email. The questionnaire included a combination of open and closed questions. Closed questions used a Likert scale including a "not sure" alternative. Response categories included agreement and frequency. The terminology 'strategic decision' is a generic term, so each individual agency questionnaire was specifically designed to reflect specific work programs being examined. The questionnaire interrogated participant's understanding of the strategic decision, their agreement with the strategic decision and its importance, and the congruence of the strategic decision with core work. In phase one a total of 132 questionnaires were completed across the four regulators. In phase two a total of 91 completed responses were recorded. Survey questions in phase two were the same as those administered in phase one. However, given a number of structural and strategic changes had occurred in the intervening period between phase one and two of the research in each of the four regulators, only data from phase two is used in the analysis and findings. Strategic decisions matured from primarily in development in phase one of the research to being deployed in phase two of the research. Consequently, this application of data only from phase two ensured that the most relevant views of operating managers actually involved in deploying strategic decisions were utilised in discerning aspects of the strategic decision implementation processes.

Documents

In addition to the ongoing analysis of documents at each phase of the research, prior to conducting the interviews and questionnaires, participating regulators' policy and strategic planning documents and reports were analysed. Key documents included national policy and strategy documents (the *National Compliance and Enforcement Policy* and the *Australian Work Health and Safety Strategy 2012-2022*). Evidence such as the regulators' planning documents were also analysed, including corporate plans for 2010-11 and 2012-13/2014, as well as supporting business plans, planning documentation, workshop handouts, agendas and strategic decision work programs and project plans for those periods. This examination of relevant project plans, program plans and business plans provided further comparative data for the study and also informed some questions, including prompts, asked in interviews and questionnaires. Notes were also taken during interviews with top and middle managers, and these notes

were analysed in conjunction with the taped interviews and verbatim transcripts to corroborate those interviews and provide additional information.

Other overarching documents that provided evidence and also context for the research were jurisdiction specific plans including state or territory plans that guided public agencies in their policy and budget decisions. The most recent annual plans of all eight work health and safety jurisdictions were also analysed, as well as for the preceding three years of the research period. These plans provided information on strategic direction as well as organisation charts for the various regulators, in many cases documenting the structural changes and the rationale for those changes. Evidence was also obtained from other regulatory agency and organisation websites. Intranet material including various documentation such as compliance and enforcement policies of regulators in various jurisdictions across Australia were also analysed, as well as standards, policies and other regulatory documents from both within Australia and internationally. This documentation provided context for the consideration of higher level changes to regulatory policy, as well as the mechanisms for those changes.

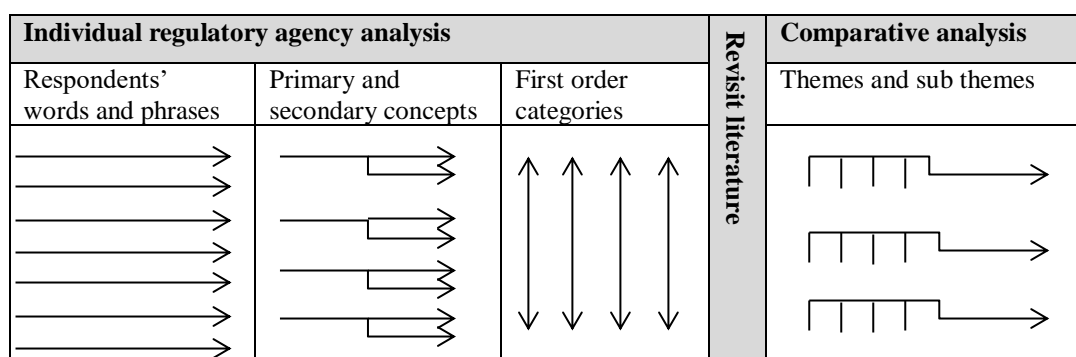
Data analysis

As the research was on a topic which is under-represented in the literature it was more appropriate to work inductively by generating data and reflecting on what themes the data were suggesting (Yin, 2009). Data were analysed continuously, with interviews transcribed within 5 days of interviews being conducted and data from the online questionnaires imported directly into a statistical database (Qualtrics). This process of continuous data analysis in conjunction with data gathering supports the development of knowledge (Eisenhardt, 1989). The data were analysed through interpretation, as a search for themes that originated from the data. Themes were generated from coding, categorisation and analytic reflection (Saldana, 2013). The sampling strategy generated a number of comparative data analyses at three distinct levels. Data were collected and analysed at jurisdictional, management and operational levels. Despite being somewhat complex this embedded design, or multiple levels of analysis, enabled induction and the building of knowledge (Yin, 2009).

The identified data sources yielded a rich qualitative dataset which, when analysed thematically at the three levels identified above, resulted in a number of key themes. These themes were extrapolated through coding and categorising. This process was managed through an appropriate software program (NVivo) that enabled complex multiple coding of large quantities of qualitative data. Patton (2002) suggests that whilst there are no “mutually exclusive or exhaustive ways of organising and reporting qualitative data...[the researcher]...must have some initial framework for organising and managing the voluminous data collected during field-work” (p.438). The coded items were compared and contrasted in an iterative process as the two phases of data collection and analysis progressed.

In this research, the same process was used for analysis of data collected in both phase one and two. Initial coding of data involved a single regulatory agency with multiple participants, that is, top, middle and operating managers of one of the four participating agencies. The transcripts of these semi-structured interviews were analysed by an iterative process of descriptive coding. Data from the questionnaires in phase two were analysed in a separate process to that of the interviews, but were incorporated in the comparative analysis as themes emerged. The framework used for analysis of the interview data collected from each phase of the field work is presented in figure 3.4 below:

Figure 3.4: Data analysis framework



As demonstrated in the figure above each interview transcript was coded by taking words directly from the transcripts of the interviews, or constructed from concepts identified by the researcher from those transcripts. This line-by-line coding involved a

number of iterations. In an initial reading of each transcript comment was made in the margin, either using the interviewee's own words or phrases, or words or phrases that reflected what was meant. This process broke the data into discrete parts to enable closer examination and comparison for similarities and differences. In essence, the coding process was a search for patterns (Saldana, 2013). These iterations or cycles of coding generate categories, themes and concepts to facilitate development of meaning and/or building theory (Saldana, 2013).

As the interview data from both phase one and phase two were examined, multiple and connected concepts emerged from the highlighted text, and thus multiple codes were applied. These were labelled as primary (the key concept) and secondary (supporting or additional concept). The primary and secondary code notations on individual transcripts were then collated into a list and primary codes counted. Codes that were numerically highly represented, as well as secondary concepts, were recorded. Those that were numerically less highly represented were reviewed and where possible, recoded against the more common codes, or identified as outliers not relevant to the research questions. These common codes formed the basis for further coding on individual transcript documents, as linkages among the various codes became evident. Finally, a further reading of these documents resulted in the primary codes being collapsed into first order categories, using interviewees' words where possible. A code book based on these categories was developed for use in the analysis of data from the remaining three regulatory agencies. Further adjustments were made to these first order categories as the remaining data were analysed.

On completion of these analyses the literature was revisited to look for concepts that could help explain themes and sub themes that emerged from the data. In analysing these findings respondents' verbatim comments, or words and phrases that most aptly reflected respondents' meanings, were identified and captured as rich data from the interviews and questionnaires (Patton, 2002). These responses were then grouped and further analysed into themes, in effect lifting the analysis of data from micro processes to larger units that enabled the comparison of the findings from the four regulatory agencies. The comprehensive data coding for each work site, coded from first order

categories to sub themes, were retained in the study data base as evidence (Eisenhardt & Graebner, 2007).

Once the analysis of data had been exhausted for all four regulatory agencies the data and codes were put into CAQDAS software (NVivo) for ongoing management. This management included the generation of reports, and further individual and subsequent comparative analysis of key themes and sub themes. There is a debate in the research community on the use of CAQDAS software for data analysis. In consideration of some of this commentary data was initially analysed manually, as described above, and then NVivo used to manage the data. According to Gallagher, cited in Saldana (2013), such software is “effective for data management, but inadequate for the nuanced and complex work of data analysis” (p.25).

Having fully analysed individual data from all four regulatory agencies, and documented them in NVivo, further iterative analysis was undertaken across the four regulatory agencies using categories derived from the individual analysis. This cross-comparison of data was managed through NVivo software which also enabled the generation of multiple variations of reports based on manager levels and research phases that included node summary, coding summary by node, node structure, coding summary by source and coding summary by node (node being the code allocated to the verbatim views and comments). A number of similar elements emerged in relation to the characteristics and processes being examined. These themes and sub themes were “transparently observable” phenomenon in the data (Eisenhardt 1989, p.537). The outcome of this process is attached as Appendix 9.

Validity and reliability

Qualitative research takes place in “real world settings [where] the researcher does not attempt to manipulate the phenomenon of interest” (Patton, 2002, p.39). Qualitative research methods rely on interviews, observation and documents (Patton, 2002). As such it does not accommodate interpretations of rigor as applied to quantitative research that demands statistical and empirical measurements such as replication, exactitude, measurability, containment, standardisation and rule (Davies & Dodd, 2002). However,

two considerations which can demonstrate rigor in qualitative research are validity and reliability. Patton (2002) suggests that these two factors are intrinsic to qualitative research study design, analysis of findings and in judging rigor of research. Whilst also intrinsic to quantitative research, these concepts of validity and reliability also have application to qualitative research when criteria used are “appropriate to the research and the type of research methods used” (Davies & Dodd, 2002, p.80).

Internal Validity

Internal validity is primarily a product of data analysis (Yin, 2009). However, piloting interview and questionnaire content and processes aided internal validity and likely reliability of the data collected in the study (Saunders et al, 2009). The study instruments were pre-tested on comparable position holders at one of the participating regulators to test the adequacy of the study instruments as well as identify any logistical matters that needed to be addressed prior to conducting the full study. Pre-testing included cognitive pre-testing (in which the words and meaning of interview and questionnaire instruments were examined by debriefing respondents through a focus group) and field pre-testing through piloting the complete survey procedures, including contact procedures, interview scripts and questionnaires (Remler & Van Ryzin, 2011). The pilot included asking subjects for feedback to identify ambiguities, assessing whether each question gave an adequate range of responses and establishing that responses could be interpreted in terms of the information required (Remler & Van Ryzin, 2011).

As detailed earlier in this chapter, the study design comprised multiple units of analysis (top, middle and operating management) as well as multiple layers of analysis (jurisdictional, management and operational levels). Whilst this approach enables induction, it also can fail to lift the analysis back to the larger unit (Yin, 2009). This potential weakness was addressed through pattern matching (Yin, 2009) that involved comparative data analysis at the three levels identified above based on both individual and comparative analysis. The building of explanation derived from the analysis of a single regulatory agency, from which the remaining regulatory agencies were then compared and contrasted to generate themes, patterns and findings. This iterative

process meant that there was continual movement between data collection and analysis to ensure congruence between the research design and its implementation, and confirmation of the findings.

To strengthen validity a range of documentation was used to obtain evidence and corroborate other data sources such as interviews and questionnaires. This documentation included publicly available material such as annual reports and strategy documents, as well as material such as planning documents and project plans provided by the four regulatory agencies. Data management tools included analytical aids comprising individual summary sheets for interviews and a research diary. Immediately following each interview notes were taken of key words or phrases for future coding reference. All interviews were audio recorded, with the consent of the interviewee, and transcribed verbatim by a commercial transcription service. The completed transcript was then read by the researcher in conjunction with listening to the taped interview, to correct any errors in transcription as well as to take note of salient and/or interesting points and broad themes. These points and themes were recorded on individual interview summary sheets, and cross checked with the post-interview notes from the research diary to identify preliminary key words in preparation for coding and categorising the data. Each interview participant was then subsequently provided with their full transcript, including the interviewer questions, so that they could check for accuracy of transcription. No major changes to transcripts were identified by interview participants.

External Validity

As previously noted, interpretations of rigor in qualitative research do not accommodate the same demands as quantitative research (Davies & Dodd, 2002; Patton, 2002). Claims of generalisability however can be made in relation to this study. The design of the research covers four regulatory agencies in different geographical, political and economic contexts. As shown in figure 3.3, interviews or questionnaires encompassed three management levels across multiple operating units. The interviews and questionnaires were repeated across these geographical and operational units. These factors of breadth and depth provide a degree of generalisability to the research.

The analysis of the data was an iterative process, building an understanding of comparable operational links between the regulators' decision-making, resource allocation and planning processes. The analysis also looked for differing and/or competing internal approaches to the implementation of defined policies, and the associated application of discretion at various levels within the individual regulatory agencies, in order to address rival explanations (Yin, 2009). The research was inductive, not based on an existing theory or on testing stated hypotheses, so there was a risk of "drifting away from the original topic of interest" on a sea of data (Yin, 2009, p.144). Safeguards included reliability tactics discussed below, including use of a study protocol and establishment of a study database (Yin, 2009). The integration of findings from interviews with top and middle managers with results from surveys of operating managers also ensured triangulation of data.

Reliability

Aspects of methods that addressed reliability requirements included adherence to a data collection protocol for interviews. The interviews were recorded in separate audio files with a name and date identifier. Transcripts of the interviews were identified by a discrete numbering system for the individual regulatory agencies, the interview phase and the individual respondent. This utilisation throughout the research of the principles of a study database (a formal assembly of evidence distinct from the study report) and a chain of evidence (explicit links among the questions asked, the data collected and the conclusions drawn) substantially increased the reliability of the data collection (Yin, 2009). In arguing that reliability extends to the writing itself, Stewart points out that "[R]eliability should not only be done, it should be seen to be done" (p.79). To that end her suggestion that questions should be included in the write up of findings as well as information about the number of interviews conducted has been included in the presentation of the findings from the four regulatory agencies.

As the analysis of the qualitative data was a process of induction and building of knowledge, it was important that data were not misinterpreted through researcher bias. As previously detailed the process of coding and creating categories was an iterative process of induction to build meaning from the rich data derived from in-depth

interviews with forty-four top and middle managers, without losing that richness in the analysis. This coding and categorisation was based on tabulation of the frequency of verbatim words and phrases. The translation of the codes into categories entailed methodically reviewing emergent concepts to enable a more considered analysis. The respondents' views and comments were retained verbatim as much as possible as primary and secondary concepts. These concepts were then rolled up into broader concepts, or first order categories, to enable a deeper thematic analysis of the data.

A degree of subjective interpretation occurs however in this process, so any potential for bias was addressed by meticulously documenting the steps of translating the data to concepts and ultimately to sub themes and themes. Triangulation, specifically in this research the use of four discrete regulatory agencies with multiple sources of data including retrospective data within each regulatory agency, avoided the bias of a single data source (Cassell & Symon, 1994; Easterby-Smith, Thorpe & Lowe, 1997). The potential for retrospective errors in data collection (such as faulty memories or attempts to recast behaviours in a different way) were considered (Golden, 1992) through comparing perspectives of different top, middle and operating management levels within each regulatory agency, at two discrete periods of time. Checking data from interviews against multiple sources including written documents such as program plans to corroborate responses further advanced reliability considerations (Patton, 2002). As outlined in this chapter an array of data sources was accessed to obtain evidence (Eisenhardt, 1989; Yin, 1994). The collection of documentary information not only provided historical context for the research but also corroborated and informed qualitative data collected in the research phases. A presentation of findings was made to one of the participating regulators once the analysis was completed, to further test the reliability of the coding through gauging consistency in interpreting themes.

Additional challenges

Whilst the potential for bias was addressed through these reliability and validity considerations, an additional consideration was addressing the prior relationship of the researcher with a work health and safety regulatory agency. An added challenge in undertaking the research was to limit or remove the potential of over familiarity with

terms, and in some cases assumptions by the researcher, that could interfere with understanding and thus critical analysis. In addition to close review of documentation relating to the regulatory agencies' strategic planning, including alignment to harmonised approaches, particular attention was paid to interrogating respondents as to the meaning of terms. This attention was reflected in asking respondents to specifically explain their understanding of the use of terms such as risk management approaches. In addition to this direct questioning, the interview and questionnaire instruments were designed to extract meaning. The interrogation of meaning covered concepts such as the intent of the *National Compliance and Enforcement Policy*; the understanding and use of evidence; the application of problem solving methods and engagement with stakeholders. The semi-structured nature of interview questions also enabled probing of terms used by respondents in order to clarify and document those interpretations for inclusion in the data analysis and presentation of findings.

Management of Ethical Issues

The project was approved by the Human Research Ethics Committee (HREC) at the University of Newcastle (Reference No: H-2012-0410) ensuring that the project and procedures described complied with the provisions in the *National Statement on Ethical Conduct in Human Research*.

Specific ethical issues considered throughout the research process were privacy, voluntary nature, consent, confidentiality, anonymity, embarrassment, objectivity and quality of research (Saunders et al, 2009). These occur in varying degrees at all phases of the research process, including “formulating and clarifying your research topic; designing your research and gaining access; collecting your data; processing and storing your data and analysing your data and reporting your findings” (Saunders et al, 2009, p.188). The research topic was refined and clarified over the initial literature review period. This meant that the research topic not only represented useful research to the participants, but was based on a critical review of current literature including comparable research. It also linked to strategy-as-practice, a comparatively new but academically recognised aspect of strategy theory. Participants were selected on the basis of their specific knowledge and expertise relating to the matter being investigated.

All informants were aware of the nature of the research and were articulate and informed about their roles and engaged in the strategic processes within their respective organisations.

Participation was voluntary, with the informed consent of each participant obtained. Each interview and questionnaire participant were provided with an information sheet setting out the relevant information including ethical and confidentiality controls. Verbal consent to the interview was firstly obtained in writing and then confirmed and recorded at the beginning of each interview. Interviews were recorded by audiotape and notes. The accuracy of the transcripts of the audio recordings was verified by interview participants who were provided with a secure copy within a few weeks of the interview. As questionnaire participants are not identifiable, consent was assumed through completion and submission of the online questionnaire. Participants were given an option to opt out of the questionnaire if they so desired.

The data that were collected through this research had identification removed during the analytical process. No information that could directly identify any individual or agency was included in any of the research outcomes. Where there was a need to identify individual data such as linking different data sets, the identifiers were removed and replaced with a code. The coding master list was stored independent of and separate to the database.

Summary

In this chapter, an outline was provided of the approach taken to the research, with qualitative inquiry justified as the most appropriate approach to address the research questions. As this research seeks to interrogate an understudied area of decision-making within regulatory agencies, the research approach necessitated expeditious use of data to gather multiple perspectives. The longitudinal nature of the study over two discrete phases involving staff at different geographical locations and at three defined management levels has been argued as the best means to achieve these perspectives. Aspects of validity and reliability were also addressed with details of aspects of the study which addresses these aspects as being appropriate to the research and the type of

research methods used. Particular challenges of the role of the researcher due to having prior experience in a regulatory agency, and how these challenges were addressed, were also discussed.

The next three chapters present the findings from the application of methods used in the research. The chapter immediately following looks at the findings from data that revealed how the four regulatory agencies that comprised this study interpreted harmonised policy as a precursor to translating this policy into operational strategies that enable the identification of problems for attention.

CHAPTER 4: INTERPRETING AND APPLYING HARMONISED POLICY

Introduction

As determined from the review of literature in Chapter 2, current regulatory theory highlights the adoption of risk-based approaches in the implementation of regulatory policy. These risk-based approaches are based on the notion that such approaches provide a rational basis for allocating regulator attention and resources to identified risks. The adoption of risk-based approaches reflects NPM influences of explicit performance measures; devolution of authority and efficient use of resources; NPG concepts of participation and pluralism in decision-making and increased emphasis on accountability of decision-makers. Harmonisation contributes to accountability by providing common legislation and associated consistent policy to be pursued by jurisdictions, albeit by differing strategies. Despite the premise of harmonisation and the adoption of risk-based legislation, in practice the implementation of policy goals through individual jurisdictional strategic decision-making processes may be influenced by a range of factors in the decision-making process.

This thesis provides an examination of decision-making processes in four regulatory agencies and identifies a number of salient factors impacting on decision-making. The main research question asks how decision-makers in a risk-based regulatory environment interpret policy and translate it into strategies and actions. Accordingly, this chapter now explores the premise of harmonised, risk-based work health and safety arrangements in Australia that underpin decision-making. In this and the following chapters the four participating regulatory agencies are titled Regulator A, B, C and D to maintain the confidentiality of individual participants. Individual interview respondents are identified by regulatory agency (RA, RB, RC or RD) followed by phase of research (1 or 2) and then top manager (TM) or middle manager (MM) role and the individual respondent for that phase and role (1, 2, 3, 4 or 5). For example, a quote from or information provided by a second top manager respondent in phase 1 from regulator B is identified as (RB1TM2).

The implementation of risk-based approaches in Australia

The move to risk-based approaches by Australian work health and safety jurisdictions was originally influenced by recommendations in an early report by a United Kingdom parliamentary committee headed by Lord Robens. The report was released in 1972 with a key recommendation to remove the mass of prescriptive legislation in place at that time and replace it with single enabling legislation based on risk rather than hazards (Walters, 2003). Australian work health and safety regulators in each State and Territory took up risk-based principles in their respective jurisdictions and gradually adopted a risk-based approach to compliance and enforcement activities. Until this move to risk-based regulation, work health and safety standards were generally focused on prescriptive measures such as specifying weight loads to be handled by workers. The legislative focus then moved to general duty of care provisions requiring regulated entities to work out *how* to achieve the required standard, rather than addressing specified standards on *what* had to be done.

More recently, Australian regulators have focused on risk management as a means of effectively implementing regulatory policy. An OECD report on government regulatory policy acknowledged enforcement of regulations can be optimised through risk-based approaches, but reported only nine of the thirty surveyed OECD countries adopted a central government policy on risk-based enforcement of regulation (OECD, 2010). In addition to Australia, countries adopting risk-based approaches were Belgium, Canada, Denmark, Finland, the Netherlands, New Zealand, Sweden and the United Kingdom. Australia was also identified by the OECD as one of the front-running countries for regulatory reform practices, including “early and comprehensive adoption of OECD good practices as well as introduction of novel approaches” (OECD, 2010, p.15). These novel approaches include innovative compliance and enforcement policies that reflect principles of risk-based regulation. Reflecting the adoption in Australia of these approaches, the Better Regulation Task Force (2006) recommended government departments should publish risk frameworks or underpinning procedures that reflect their approaches to regulation and enforcement. A website review of the published compliance and enforcement policies of a number of regulatory agencies across

Australia reflects a shift in recent times to orient agencies' decision-making processes to risk-based regulatory approaches.

In some Australian States and Territories oversighting agencies such as ombudsman and audit offices provide guidance on decision-making to facilitate the interpretation and application of risk-based policy. An Australian National Audit Office (ANAO) better practice guide on administering regulation provides guidance to regulators on efficient and effective management of regulation. Their most recent publication gives a greater focus than the previous 2007 version on the "importance of risk management, effective stakeholder engagement, the value of data analysis as a source of regulatory intelligence, regulator behaviour, and regulator and regulatory performance" (ANAO, 2014, p.i). In particular, the Guide proposes that a risk-based approach to the administration of regulation consists of promotion of a risk management culture and integration of risk management principles into the strategic decision-making processes of regulatory agencies (ANAO, 2014, p.15).

In NSW, in response to a review of Government services by a number of industry led Taskforces, the government required all regulators (excluding State Owned Corporations) to implement a number of reforms by the end of 2014. These reforms included promotion of a risk-based approach to compliance and enforcement. (NSW Department of Premier and Cabinet, 2014). In a guide for regulators, the Victorian Department of Treasury and Finance has also identified that regulators should take a risk-based approach in administering and enforcing regulation (Victorian Government, 2014). Similarly, the Queensland Ombudsman has identified risk management and prioritisation as examples of strategies regulators can employ to guide the exercise of their discretion. The Ombudsman further states risk management is an integral part of good regulatory practice and can be applied as a means of avoiding or mitigating potential problems. The Ombudsman suggests a "robust risk management framework will result in greater transparency and accountability; consistency in decision-making; and effectiveness and efficiency" (Queensland Ombudsman, 2009, p.19). These are impressive claims that reflect inherent tensions in the implementation of risk-based regulation, where consistency can work against the need to be responsive to emergent or immediate risks.

In response to identified complexities in reframing regulatory policy around risk-based approaches, governments across Australia have developed a range of material to assist regulatory agencies enact these approaches. Those guides provide comprehensive information on the premise of risk-based practices, but little practical guidance on putting these into practice. In some respects, these documented approaches to risk-based practices, particularly where there is an emphasis on procedural requirements, or claims of aiding transparency or consistency, work against the application of risk-based approaches. Processes for selecting and applying risk criteria are predicated on identifying often ill-defined or obscure risks. The tricky nature of these risks requires flexibility in decision-making, with such processes hidden in internal administrative arrangements (Baldwin & Black, 2008; Black & Baldwin, 2010).

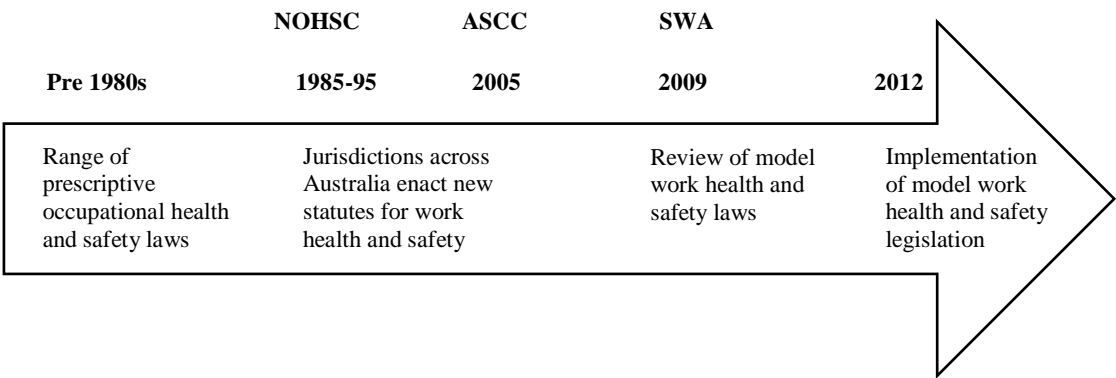
The establishment of harmonised work health and safety arrangements

Law making powers in Australia are distributed between the Commonwealth and various States and Territories. In some areas such as defence the Commonwealth has sole constitutional power to create and enact policy. In other areas such as work health and safety there are overlapping responsibilities. However, the Commonwealth has expanded the scope of its powers in these other areas through establishment of mechanisms by which a consistent national approach is enabled. These mechanisms include the Council of Australian Government (COAG), the peak intergovernmental forum in Australia. The members of COAG are the Prime Minister, State and Territory Premiers and Chief Ministers and the President of the Australian Local Government Association. The role of COAG is to “promote policy reforms that are of national significance, or which need co-ordinated action by all Australian governments” (COAG website, 2014).

Another influential body on policy reform is the Productivity Commission, describing itself as an “independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians” (Productivity Commission website, 2014). In a report on the regulatory burden of work health and safety laws on business, the Commission identified “significant differences among OHS regulators in: their level of resources; funding sources; availability and application of enforcement

tools; appeal mechanisms; and transparency” (Productivity Commission, 2010, p.xi). These significant differences were reflected in the plethora of work health and safety laws, regulations and guidance material across the States and Territories. Attempts by the Commonwealth government at harmonising these arrangements had been underway since the mid-1980s through the establishment of a series of governance and other arrangements to facilitate implementation of work health and safety legislation across Australia. These arrangements are set out in figure 4.1 below.

Figure 4.1 Progress towards harmonisation



As demonstrated above, prior to the mid-1980s there was a range of discrete Commonwealth, State and Territory work health and safety laws. Since the mid-1980s there have been a number of reviews of work health and safety laws as well as development of a series of national ten-year strategies, and then most recently development of model work health and safety laws. The National Occupational Health and Safety Commission (NOHSC) was established in 1985, at which stage moves were underway across the jurisdictions to enact new statutes for work health and safety. NOHSC was later replaced with the Australian Safety and Compensation Council (ASCC) in 2005, which was in turn replaced with SWA in 2009. SWA was established by an Act of Parliament with statutory functions vested in the Safe Work Australia Act 2008.

Despite a common approach to a risk-based legislative framework, each State and Territory had until recently developed its own laws and regulations. These jurisdictions each adopted a three-tiered approach to work health and safety regulatory systems that

comprised Acts, regulations, and codes of practice or guidance material. These disparate approaches meant workers and businesses faced with similar risks were afforded different levels of legal protection and responsibilities when operating across state or Territory borders (Johnstone, 2008). Then in 2008 COAG endorsed a reform agenda, requiring each Australian jurisdiction to enact a uniform legislative model for the regulation of work related health and safety risks, thus replacing a multitude of Acts, regulations and codes of practice. These reforms were aimed at “reducing the costs of regulation and enhancing productivity and workforce mobility in areas of shared Commonwealth, State and Territory responsibility” (COAG, 2008, p.3).

Through COAG an *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* was signed by all Australian State and Territory governments in 2008. This move to harmonise work health and safety legislation established an agreed national legislative framework, replacing individual State and Territory work health and safety legislation. The legislative change process, managed through SWA, was predicated on the *output* of nationally uniform work health and safety legislation, as well as the *outcome* of a consistent compliance and enforcement experience by those being regulated. This national legislative framework includes the Model Work Health and Safety (WHS) Act, model WHS regulations, model codes of practice and a *National Compliance and Enforcement Policy*.

As a means of enabling this outcome of consistency, the workplace health and safety regulatory agencies, working under the Heads of Workplace Safety Authorities (HWSA), engaged in a comprehensive program of work to harmonise their approaches to the administration of the legislative framework. HWSA is an independent body established prior to the COAG initiatives and comprises the senior executives of Australian and New Zealand workplace health and safety regulatory agencies. In addition to the model Act, regulations and codes of practice, this program of work under HWSA includes a raft of policies and procedures across the entire compliance and enforcement spectrum from information and guidance material through to penalties and prosecution activities. A range of material available from the SWA website as at May 2016 includes interpretive guidelines on key concepts within the Act, such as the meaning of ‘reasonably practicable’; guidance material on a diverse range of work

health and safety issues from airborne contaminants through to workplace traffic management; and fact sheets and information sheets on matters ranging from asbestos in dust or debris through to volunteers' 'officers' and their duties (SWA website, 2016).

However, despite these harmonised approaches, progress of legislative changes to work health and safety in Australian States and Territories has not been seamless. Despite the stated intention of harmonised or standard arrangements, by early 2016, over four years after the target implementation date of 1 January 2012, a number of States still had not fully adopted the new legislation. Western Australia had progressed to tabling a draft Bill however Victoria maintained a position of not participating in the harmonisation agenda (SWA website, 2016). Nevertheless, all Australian work health and safety regulators had been involved in the adoption of a nationally agreed strategy and a compliance policy whilst engaged in the processes to implement harmonised work health and safety legislation. The *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*, and the Safe Work Australia Act 2008 provide for harmonised work health and safety laws to be complemented by a nationally consistent approach to compliance and enforcement. The *National Compliance and Enforcement Policy* sets out this approach.

The intention in adopting the *National Compliance and Enforcement Policy* is to provide consistency in regulators' compliance and enforcement actions, thus benefiting the regulated and wider community through improved effectiveness and efficiencies (SWA, 2011). The Model WHS Act provides a broad legislative model for adoption by various States and Territories, acknowledging differences in relevant drafting protocols and other laws and processes operating within each jurisdiction. However, the adoption of the *National Compliance and Enforcement Policy* suggests that despite these variations, a nationally consistent approach is taken to compliance and enforcement. The Policy was endorsed by SWA members on 29 July 2011 and by the Workplace Relations Ministers' Council on 10 August 2011. The principles articulated in the *National Compliance and Enforcement Policy* are consistency; constructiveness; transparency; accountability; proportionality; responsiveness and targeted (SWA, 2011). The Policy also requires those undertaking compliance and enforcement activities to be

responsive to the capability of regulated entities, and to be accountable and transparent in their decision-making processes (SWA, 2011).

In addition to harmonising legislation and adopting a nationally consistent approach to compliance and enforcement, SWA in June 2012 endorsed a ten-year national strategy to “provide a framework for the broad range of national activities to improve the health and safety of workers in Australia” (SWA, 2012, p.1). The *Australian Work Health and Safety Strategy 2012-2022* provides a uniform strategy that identifies high level targets for reductions in work related injury and illness as well as a number of priority industries. The strategy sets out a vision of improved worker health and safety and productivity framed around a risk-based approach predicated on systematically managing risks (SWA, 2012, p.3). Whilst the Strategy specifies targets based on percentage reductions in number of defined areas, it does not however prescribe activities to achieve these outcomes. Each jurisdiction develops its own strategic plan that contributes to these targets, and is reported on annually to SWA.

Work health and safety jurisdictional arrangements

Across Australian work health and safety jurisdictions, interpreting and applying harmonised policy and translating into strategies and actions is undertaken within differing regime arrangements. Notwithstanding a common approach to risk-based regulation, in some jurisdictions there are separate laws for mining, dangerous goods, heavy transport and electrical safety, which are regulated in some cases by the work health and safety regulator, and in others by a separate regulator. Despite a focus on harmonised legislation, structural approaches to managing workplace health and safety also varies across Australian State and Territory jurisdictions, with some agencies solely responsible for managing work health and safety, and others responsible for both worker’s compensation and work health and safety regulation. The table below provides an overview (as at April 2014) of jurisdictional arrangements for managing work health and safety across Australia. This information was obtained from the internet sites of the regulators including, where available, their most recent annual report:

Table 4.1: Jurisdictional arrangements for managing work health and safety

AGENCY	JURISDICTIONAL RESPONSIBILITY		
	WORK HEALTH AND SAFETY	WORKERS COMPENSATION	OTHER
WorkSafe Australian Capital Territory (within the Office of Regulatory Services, part of the ACT Department of Justice and Community Safety)	✓ WorkSafe ACT	✓	
Comcare (Commonwealth) is the regulator of work health and safety through the Safety, Rehabilitation and Compensation Commission, and operates within the Employment portfolio.	✓ Regulatory Services Group	✓	✓
WorkCover New South Wales (within the Safety, Return to Work and Support Division, and reports to the Minister for Finance and Services.)	✓ Work Health and Safety Division	✓	
Northern Territory Work Health Authority (In 2012-13, the functions of the Work Health Authority were performed by NT WorkSafe, a division of the Department of Business)	✓ Work Health Authority	✓	
Work Health and Safety Queensland (within the Department of Justice and Attorney General)	✓ Work Health and Safety Queensland		✓
SafeWork South Australia (within the Department of Premier and Cabinet)	✓ SafeWork SA		✓
WorkSafe Tasmania, within the Department of Justice. (in 2012-13 the functions of WorkSafe Tasmania were performed by Workplace Standards Tasmania)	✓ WorkSafe Tasmania		
WorkSafe Victoria is an arm of the Victorian Workcover Authority	✓ WorkSafe Victoria	✓	✓
WorkSafe Western Australia (a Division within the Department of Commerce)	✓ WorkSafe WA		

As demonstrated in the table above a number of regulatory agencies have additional responsibility for administration of other workplace regulation such as industrial relations, or separate workplace health and safety regulation such as mining safety, electrical safety, dangerous goods or seafarer's worker's compensation. Within some regulatory agencies there is further demarcation with business units at a group or division level with specific responsibility for the relevant workplace health and safety legislation. Some agencies such as WorkSafe Western Australia and Work Health and Safety Queensland are responsible solely for managing work health and safety, and others such as WorkSafe Australian Capital Territory, WorkCover New South Wales, WorkSafe Tasmania and Northern Territory Work Health Authority, have a hybrid structure, responsible for both worker's compensation and workplace health and safety regulation.

A number of regulatory agencies including Comcare, SafeWork South Australia, WorkSafe Victoria and Work Health and Safety Queensland have additional responsibility for the administration of other workplace regulation such as industrial relations, or separate workplace health and safety regulation such as mining safety, electrical safety, dangerous goods or seafarer's worker's compensation. Despite the harmonisation of work health and safety regulation, within regulatory agencies there are varying structural arrangements based on other regulatory responsibilities. The regime context, including the types of risks, and the regime content, including distribution of resources and organisation complexity (Hood, Rothstein and Baldwin, 2010) influence the way in which risk-based regulators operate. For work health and safety regulators, diffuse regulatory responsibility as well as varying structural arrangements of regulatory agencies may create some challenges in framing strategic processes.

A number of regulatory agencies are situated within larger public sector departments, such as Attorney General, Treasury and Justice. For some jurisdictions, this is a change to previous arrangements. The Northern Territory underwent a change in 2013, with the functions of the regulator moved to the Department of Justice. This change mirrors other jurisdictional arrangements of locating the regulatory agency under a larger public sector department. Within some regulatory agencies there is further demarcation, with business units at a group or division level specifically responsible for the relevant workplace health and safety legislation. In NSW WorkCover NSW is responsible for both worker's compensation and work health and safety, with the latter regulated by the Safety, Return to Work and Support Division. At the time of this review of arrangements, the Commonwealth agency Comcare manages work health and safety regulation through the Regulatory Services Group.

Overview of individual regulatory agency arrangements and changes

Over the two phases of the research, encompassing eighteen-months real time across the 2012/13 and the 2013/14 planning periods, the four regulatory agencies involved in the research underwent some degree of organisational and/or structural change. These changes varied from a major change program in place at the commencement of the research project that continued through to the end of the research, at which time the

changes were being bedded down (regulator A), through to adjustments such as the importation of data and intelligence functions into the regulatory agency from its workers compensation body (regulator B, regulator D), or conversely, the move of its data and intelligence function out of the work health and safety regulatory agency into another business unit of the organisation of which it was a part (regulator A). Across the period of the research, there were changes of chief executive officer (CEO) of the regulatory agency (regulator A, regulator C), changes of organisation CEO (regulator A, regulator B); changes in location of the regulatory agency within the public sector structure (regulator A, regulator B, regulator D) and changes in minister (regulator A).

Regulator A belongs to a larger organisation comprising the work health and safety regulator as well as a worker's compensation agency. This organisation is one of five established under a single chief executive officer (CEO) and Minister. At phase one of the study, the regulatory agency had recently completed a business review and subsequent restructure commenced two years previously. During this period, there was a change of CEO, government and Minister. By phase two of the study, Regulator A encompassed three business units reporting to the regulatory agency manager. One business unit is organised around technical and specialist functions, another around frontline functions dispersed across a number of metropolitan and regional locations, and the third providing business management and governance functions (regulator A Business Plan 2012/13-2013/14).

Regulator B is a regulatory agency situated within a larger organisation with dual responsibility for workplace health and safety as well as worker's compensation legislation. This organisation has a CEO reporting directly to a Minister. Similar to the other regulators in the study, regulator B also went through a change process. One result of this process was a change to the structure at the end of 2011 to coincide with the implementation of the umbrella work health and safety legislation, and since mid-2012 changes to reporting structures (regulator B Annual Report, 2011-12). By phase two of the study, regulator B comprised seven business units reporting to the regulatory agency manager. Five of the business units are organised around frontline functions dispersed across a number of metropolitan and regional locations. Another business unit is organised around a range of specialist functions, with the remaining business unit

providing a range of management support functions. The structure is however a matrix where managers of these business units are responsible for both team and nominated operational portfolio areas (regulator B Business Plan 2013-201).

Regulator C is situated within a government department with dual responsibility for both work health and safety and worker's compensation. It has additional responsibility for the administration of other workplace related regulation. By phase two of the study the regulatory agency was organised predominantly around frontline functions, with four business units reporting to a regulatory agency manager. One of the business units comprises five geographical regions that deliver a range of compliance and enforcement functions. Another two business units are organised around technical and specialist functions, with the remaining business unit responsible for a range of stakeholder engagement functions (regulator C organisation chart, 2013). Another agency in the department to which regulator C belongs provides a range of specialist work health and safety functions.

Regulator D is placed in a government department with responsibilities for other workplace related regulation. The regulator underwent a restructure in the period of the study, including establishing a discrete stakeholder engagement function (regulator D organisation chart, 2014). At phase two of the study the regulatory agency was organised into three business units reporting to the regulatory agency manager. In addition to the stakeholder engagement business unit, one of the business units is primarily structured around compliance and enforcement functions, with one component responsible for regional delivery. The other two business units are organised around business support and technical and specialist functions (regulator D organisation chart, 2014).

Reasons for organisational change: a 'new approach'

As seen from this overview, all four regulatory agencies had undergone some degree of organisational change over the period of the study. In this context of flux, the impact of umbrella legislation and a consistent approach to policy implementation as a driver for organisation change is not able to be clearly established. However, interview responses

reflect a firm belief the changes were undertaken to better facilitate a ‘new approach’ by three of the four regulatory agencies. For regulator B, regulator C and regulator D, this ‘new approach’ is incorporated into broader policy imperatives relating to a focus on aiding and assisting those being regulated, as opposed to punishing and prosecuting. In these three regulatory agencies, the accommodation of this ‘new approach’ required structural changes, from minor adjustment to existing structures, to a major restructure involving the integration of previously separate departments. A number of reasons were suggested for the changes, with one middle manager respondent in regulator D indicating that whilst related to government cost reduction initiatives, they also provide an opportunity for the regulator to review its practices and look for “more effective and efficient ways of providing the same service” (RD2MM3). Interestingly, whilst regulator A had also undergone substantial changes, respondents did not refer specifically to these changes. This may be because those respondents had become inured to changes given the number and extent of changes within that regulatory agency, or because the changes were well underway prior to the commencement of this study.

Reflecting changes in regulator D between phase one and phase two of the study, the regulatory agency changed because of recent moves to better reflect the agency’s strategy on compliance, enforcement and workplace support. This change was framed by a top manager as “we’re not watering down anything. We’re sharpening the focus if you like on that workplace support” (RD2TM2). These changes were driven by external pressures to change the regulator’s approach. These changes were driven from a formal parliamentary review of an optimal regulatory model for the agency, as well as from engaging with stakeholders to gather their perspectives (RD2TM2). This concurrence by the top manager with the changed approach was not shared by a colleague, who in the second phase of the research so vehemently disagreed with recent organisational changes that the interview was put on hold at the request of that respondent who did not wish to continue this aspect of the discussion.

One aspect of the changes within regulator D’s operational environment is closer alignment with necessary resources, such as data analysis functions, in a more integrated way. The changes in that regulatory agency enable better approaches to

decision-making, as previous approaches had been identified as inadequate. This was the view expressed by one middle manager, who stated that “Clearly we can’t continue to do what we’re doing because you know that would be madness...I mean you, if you want to look at improving your results, you need to look at different ways of doing it” (RD2TM1). This consideration of improving results through changes in approaches reflects the move by the regulatory agency in their strategic processes to taking a wider perspective in gathering evidence, as well as closer engagement with regulated entities in identifying problems and generating solutions.

Typical of this ‘new approach’ was the transition across the research period by regulator B of its strategic direction from a focus on enforcement to one of enabling. In the first phase of the research the regulator’s strategic plan derived from an annual corporate strategic plan from which a workplace health and safety strategy was developed, drawing specifically from the corporate plan and thus enabling a direct line of sight. It was framed around a strong enforcement approach to those who did not comply (regulator B Work Health and Safety Plan 2011-12). By the second phase of the research this punitive approach changed to a greater focus on prevention (RB1MM1). This focus on preventative work is reflected in the number and types of campaigns based on risk profiling that this regulator recently implemented (regulator B Project Plans 2013/14). The structural changes within that regulatory agency facilitate decision-making, providing an improved structure for design, implementation and coordination of delivery of strategic decisions, as the restructure integrated those functions (RB2TM2).

Similarly, the business strategy for regulator C reflects a greater focus on prevention, including more of a facilitating than a policing role, with an emphasis on collaboration with regulated entities to achieve safety outcomes and ensure compliance (regulator C Business Strategy 2004-12). The ‘new approach’ based on a collaborative approach in their interventions was described by one middle manager respondent in regulator C as “a relationship model where you’ll work with that organisation multiple times over a period of time to get them up and running their business properly and more safely” (RC2MM1). In regulator C, the reasons for structural changes also are linked to strategic decision-making imperatives. In this regulator, those developing the strategic

decisions were amalgamated with those implementing the decisions. This integration of development and implementation provides a more cohesive identity for those previously marginalised from implementation processes. One middle manager respondent in regulator C was quite clear in pointing out the benefits of linking strategy and structure to enable results, arguing:

If you look at it from a strategy point of view, here am I trying to design the programs, but I'm in the same camp now as the people who are largely implementing them, the inspectors or advisors on the ground who are controlled by the regional managers. So that's been a recent organisational shift, and I used to be outside of that camp, and I think one of the good things about being on the inside of that camp is that we are all part of the same gang.
(RC2MM3)

Over the period of the research, respondents in three of the four regulatory agencies indicated the agency had, to varying degrees, strengthened strategic focus on prevention, and in some cases made changes to internal arrangements, such as aligning functions to facilitate strategic decision-making processes. These structural changes better support the strengthened or increased strategic focus on prevention by the regulatory agencies, and accordingly facilitate a coordinated approach to the development and delivery of strategic decisions. In addition to an internal coordinated approach to strategic decision-making, another aspect of the 'new approach' proffered by respondents in all four regulatory agencies is an increased focus on collaboration with stakeholders.

A client or customer focused approach is evident in strategic framework documents generated by centralised policy units of larger public sector departments within which the regulators are situated. Those documents reflect customer service principles of the larger departments, depicted as "create an internal service culture" (regulator A); "put citizens at the centre of what we do" (regulator B); "improve communication between the department and the community" (regulator C) and "build a strong customer service

culture” (regulator D). The establishment of these broad principles of engagement in strategic framework documents require the regulators to also incorporate these principles in their operational plans. For two of the four regulators, this focus is reflected as “identify and understand customer needs” (regulator A) and “deliver outstanding service to our customers” (regulator D). In the interviews conducted with top and middle managers in regulator B and regulator C reference was often made to a ‘new approach’ as one of the factors influencing strategy, and the instigation for other organisational changes either underway, or planned.

The interpretation by the regulators of broad policy directions to incorporate a collaborative focus into operational strategy and actions is reflected in their stakeholder engagement practices. All the regulators in the study have some level of involvement of external stakeholders in the strategic planning process, with two referring in their planning and strategy documents to engagement with stakeholders at the level of peak union and employer bodies, industry associations and regional associations (regulator A and regulator B). Two of the regulators also include representatives from these bodies at their planning days or otherwise facilitate their input into business planning (regulator A and regulator C). These engagement mechanisms enable those stakeholders most closely impacted by strategic decisions to participate in strategic decision-making processes.

The ‘new approach’ adopted by the regulatory agencies confers legitimacy by those stakeholders on actions arising from strategic decision-making processes. Legitimacy is an important consideration for decision-makers, as stakeholders are sources of support that are tapped to achieve the declared objective of the organisation (Alford & Speed, 2006; Mitchell, Agle, & Wood, 1997; Moore, 1995). However, such stakeholder engagement requires a level of interaction between regulator and the regulated entity which can create tensions in serving collective rather than individual needs (Moore, 1995). These considerations are examined in more detail in following sections of this chapter.

Approaches in interpreting policy

The four regulatory agencies involved in the study are all part of larger public sector departments. Public sector departments are increasingly required by central government offices to develop strategic plans against which performance is judged. Policy departments of Australian public sector agencies generally set regulatory policy, and regulators implement the objective of the policy through their strategic processes. Strategic planning and management is the means of providing coherence to the dynamic interdependent activities that take place across organisations. The public sector departments to which the regulatory agencies belong require those agencies to develop formal three to five year plans, thus promoting longer term strategic perspectives.

The institutionally defined processes by which all four of the regulatory agencies interpret policy and convert it to strategy are relatively fixed, aligned to broader corporate strategic planning processes of the larger government departments to which they belong. These processes link planning cycles to government budget cycles. All four of the regulatory agencies have formal governance arrangements relating to established boards, councils, commissions and/or advisory bodies set up by government. These governance arrangements reflect the input, to varying degrees, of these external bodies into the development of corporate strategic plans, where formal committees and other consultative bodies set strategic direction of the agencies. Regulator D has a formal governance arrangement with three work health and safety related committees situated on the organisation chart under an advisory body reporting directly to the Minister. Other arrangements are less predominant, with advisory bodies for regulator A and regulator C reporting through the public sector department to which they belong. The advisory body for regulator B reports through the public sector department as well as directly to the Minister. These various governance arrangements facilitate input to the regulatory agencies' strategic planning processes.

The five-year corporate strategic plan for regulator C has that regulator's strategic priorities, goals and targets underpinned by industry and stakeholder participation. This participation in the planning process is through formal committees and boards as well as other government departments, employer groups, union groups, and other stakeholders

(regulator C corporate plan 2013-17). As explained by one top manager a number of committees and boards “are very much involved in the development of those plans” (RC2TM1). Similarly, regulator D’s strategic framework has a focus on communication and engagement (regulator D strategic plan 2012-2016). The department objectives to which the regulator subscribes include delivering outstanding service to their customers and engaging genuinely with their stakeholders. This strategic direction is reflected in the regulator’s strategic framework. This framework is underpinned by a number of principles, one of which reflects the *National Compliance and Enforcement Policy* elements of information, assistance, compliance and enforcement. It also identifies as underpinning principles the concepts of partnerships and service delivery (regulator D business plan 2012-2013).

State plans and other overarching government plans also set strategic direction for the regulators. For regulator A, an operational plan with a four-year horizon is developed from the organisation’s corporate plan by the regulatory agency. The strategic direction is set at the corporate level, and influenced by higher level government plans (RA1TM1). Similarly, for Regulator B the strategic direction is already set by the government, with strategic objectives reflecting societal expectations (RB1TM1). The strategic framework for regulator B is based on a rolling annual corporate plan that delivers on an overarching five-year plan, with both intermediate (up to two year) and long term (up to five years and beyond) outcomes. The regulator’s supporting annual business plan provides a more detailed operational focus. The detail is developed with input from a number of sources, including formal advisory committees and key stakeholders such as unions (RB1TM1).

For regulator C, an expanded focus on prevention is also a consideration in setting that agency’s strategic direction. The regulator’s annual business plan is subsequently aligned to departmental strategies and to the government’s strategic priorities. The regulatory agency’s strategic plan sets out its contribution in broad terms, from which discrete operational business plans and project plans are developed. Priority areas are determined by injury and illness rates or high-risk activities. These are monitored to ensure that those areas continue to reflect the national and government priorities (RC1MM2). A similar context to setting strategic direction is experienced by regulator

D, with the strategic framework of the department to which the regulatory agency belongs derived from a broader government plan and a strategic plan developed by a formal overseeing body at an annual planning day that sets the strategies and directions for the agency (RD1TM2). One of these directions is in relation to specified targets, which are aligned to the focus of the agency in expanding prevention activities, as opposed to responding to incidents. This preventative approach was identified as “going to yield us the biggest outcome...[as]...we have quite an ambitious injury reduction target” (RD2TM2). To this extent regulator D, as well as the other three regulatory agencies, utilise risk-based principles in their strategic planning processes.

Risk-based regulation assumes the application of discretion at various levels based on an assessment of the degree of risk, so that regulators can both design and implement compliance strategies in a manner which ensures maximum effectiveness (Black, 2010). Two of the regulatory agencies include reference to a risk-based approach in their documented strategic plans. Regulator A specifically refers in its strategic plan to adopting a “risk-based approach to business to prioritise work around risks” (regulator A Division Business Plan 2012/13-2013/14). Similarly, regulator B describes a risk-based approach in its strategic plan as “evolving the analytical processes ...to fully incorporate concepts of harm, threat and corporate priorities” (regulator B Work Health and Safety Plan 2011-2012). This emphasis on risk is also reflected in regulator D, where there is a recent shift in the way the agency approaches its planning. The adoption of a clearly articulated risk-based approach is necessary for operational reasons, as identifying and addressing areas of highest risk enables the deployment of limited resources in a targeted way. This rationale was explained by a middle manager thus:

When you look at industry...you know that there's something like about 74,000 businesses out there. Are they all having injuries? No, they're not. Are they all contributing to poor performance? No, they're not. We've got [a limited number] of inspectors ... so we have to focus our efforts on where the risks are, we've got to take a

risk-based approach to it, we've got to actually identify where the risks are. (RD1MM2)

For all four regulatory agencies, the underpinning principle of risk as an element in decision making addresses both strategic imperatives and operational constraints, as it provides a means of directing the resources of the regulatory agencies to areas of highest risk. Differing appreciation or comprehension of risk may however influence the ability to implement a coherent risk-based approach to regulatory decision-making. Consequently, both top managers and middle managers were asked what they understood by risk-based regulation.

All the respondents across the four regulatory agencies articulated the general principles of risk-based regulation that comprised targeting of resources based on identification of greatest risk. This understanding was encapsulated by one top management respondent from regulator A as “applying a regulatory framework to those things in the community which have the greatest impact, and ensuring both at a policy and legislative [level], and in a preventative approach, that you’re applying the right level of resource to the regulatory problem” (RA1TM1). In clearly defining risk considerations at policy and operational levels in their planning processes, the four regulatory agencies demonstrate attempts to integrate risk-based principles into their decision-making processes at the strategic planning level. One of the strategy documents that reflects a risk-based approach uniformly adopted by all Australian work health and safety regulatory agencies is an overarching policy on compliance and enforcement.

Interpretation of the National Compliance and Enforcement Policy

The *National Compliance and Enforcement Policy* adopted by all Australian work health and safety regulators is one of the elements of uniformity underpinning their strategic direction. The policy provides a set of broad principles by which the regulators undertake their compliance and enforcement activities. These principles are set out in table 4.2 below:

Table 4.2: National compliance and enforcement policy principles

<i>Consistency</i>	Regulators endeavour to ensure that similar circumstances at workplaces lead to similar approaches being taken, providing greater protection and certainty in workplace and industry.
<i>Constructiveness</i>	Regulators provide support, advice and guidance to assist compliance with work health and safety laws and build capability.
<i>Transparency</i>	Regulators demonstrate impartiality, balance and integrity.
<i>Accountability</i>	Regulators are willing to explain their decisions and make available avenues of complaint or appeal.
<i>Proportionality</i>	Compliance and enforcement responses are proportionate to the seriousness of the conduct.
<i>Responsiveness</i>	Compliance and enforcement measures are responsive to the particular circumstances of the duty holder or workplace.
<i>Targeted</i>	Activities are focussed on the areas of assessed highest risk or the work health and safety regulators' strategic enforcement priorities.

Adapted from National Compliance and Enforcement Policy, SWA, 2011, p.3.

The Policy identifies the regulator's functions extend beyond the enforcement of prescriptive requirements. These functions also include a range of actions to enable and assist compliance, and incorporate actions consistent with the aforementioned regulatory strategy pyramid, across the continuum of assisting and enforcing compliance (SWA, 2011). The policy also states the regulator will balance a number of considerations in securing levels of compliance with work health and safety laws that reflect use of individual judgement and exercise of discretion. These considerations are based on building capability to achieve compliance but nevertheless taking enforcement action for non-compliance. The Policy states this approach as addressing community expectations of accountability in dealing with non-compliant regulated entities, but with a focus on building capability to comply with work health and safety laws (SWA, 2011).

In many respects enabling compliance is based on the premise of a service or customer oriented approach. This enabling function is reflected in the adoption of advice and information principles articulated in the *National Compliance and Enforcement Policy*. The Policy provides a risk-based framework for developing strategies, selecting tools and establishing procedures for a consistent approach to exercising discretion in compliance and enforcement activities. However, it is silent as to which tools, processes and strategies to implement. Instead it sets out a number of principles by which

regulators should frame their compliance and enforcement strategies. The Policy identifies these principles as ‘positive motivators’ employed by regulators in enabling compliance, and specifies these as including:

communicating with, engaging and supporting stakeholders;
providing practical and constructive advice, information, and
education about rights, duties and responsibilities; fostering
cooperative and consultative relationships between persons
conducting businesses or undertakings, their workers, health and
safety representatives, unions and employer organisations. (SWA,
2011, p.2)

Given its primacy as an endorsed national policy, there was the prospect that this document would be uniformly interpreted within and across the regulatory agencies, with a commensurate high level of shared understanding of the role and scope of the document. To ascertain how these principles are applied in the framing of strategic decisions, top managers and middle managers were specifically asked to explain the use of the *National Compliance and Enforcement Policy* in overall strategic management processes. Middle management respondents from two of the four regulatory agencies (regulators A and B) consistently emphasised the Policy as integral to the strategic management process. The positioning of the Policy as central to the strategic management processes in regulator A was exemplified by the comment from a top manager as “it’s really done a lot to the drive consistency and we’re seeing that, particularly in our decision-making processes, it’s really helped in that regard” (RA1TM2). When asked to clarify the extent of the reach of the Policy, the respondent explained that it encompasses not only the agency’s decision-making, but also influences the overall policy development work of the agency (RA1TM2). In this respect, the principles of the Policy are integrated across all the strategic processes of the agency.

For regulator B however, the Policy itself is not pivotal to the strategic decision-making process. Whilst there is an awareness of it, the main driver for the agency’s decision-making processes is based on the agency’s own internal regulatory policy (RB1TM1).

However, the agency does not completely ignore the Policy, as its internal policy incorporates the principles of the national Policy, with an acknowledgement of the use of the principles of the document as underpinning their internal regulatory policy (RB1TM2). Whilst the national Policy principles are integrated into the broader planning processes of regulator B, (RB1MM3), another perspective however suggests that there is not a consistent interpretation of the Policy across this regulatory agency. According to a middle management respondent from regulator B, the Policy is a guide only when making decisions about enforcement actions such as those leading to prosecution (RB2MM1).

This conflicted view of the *National Compliance and Enforcement Policy* is also reflected by respondents from regulator C and regulator D. These respondents see the Policy as more of a guide for inspector enforcement action rather than, as with regulator A and to some extent regulator B, underpinning the regulatory agency's overall strategic approach. As explained by a regulator C middle management respondent: "We will give people every opportunity to do the right thing, and understand what the right thing is, and talk to us about their problem. And then we'll go and do some enforcement" (RC2MM3). A supporting perspective is held by a top manager in regulator C, who explained the Policy represents a structured approach to enforcement (RC1TM2). This approach suggests a focus more on the actions included in the enforcement pyramid rather than a consideration of the underpinning principles of the Policy as explained in the Policy and depicted in table 4.2.

However, according to a middle management respondent in regulator D the application of the Policy is integral to that regulator's strategic planning, explaining it is "intertwined, which comes down from up top...and our business arms then would build their business plans on those types of policies" (RD2MM4). Contrary to this perspective, a top manager in regulator D suggests a more operational approach to the use of the Policy, stating that the Policy assists in deciding how to frame their compliance and enforcement actions in the field (RD2TM2). Similar to regulator B, regulator C and regulator D top and middle managers do not have a consistent approach to interpreting the national Policy, albeit it is one of the elements of uniformity agreed to by all Australian work health and safety regulatory agencies.

The questionnaire surveying operating managers contained a question that also elicited information on the perception of the *National Compliance and Enforcement Policy* as a key policy document. A two-part question was designed to firstly filter those who were familiar with the policy as a mechanism for a broad strategic framework, by asking for a yes or no response to the statement “I am familiar with the *National Compliance and Enforcement Policy* as a nationally endorsed policy that sets out the approach work health and safety regulators will take to compliance and enforcement”. From responses to the questionnaire there was a high level of concurrence demonstrated by the percentage of “yes” responses by operating managers within regulator A with 93% (n. 13/14) and regulator B with 94% (n.16/17). These responses reflect the interview responses discussed previously from top and middle managers from those regulatory agencies. A lesser recognition of the *National Compliance and Enforcement Policy* as a strategic document was professed by respondents in regulator D, with 80% (n.16/20) providing a “yes” response. These responses reflect to some extent the differing perceptions between top managers and middle managers in regulator D. However, within regulator C, 69% (n. 9/13) of “yes” responses by operating managers reflect an even less strong recognition of the document as an underpinning strategic policy, mirroring the perception by top and middle managers in regulator C that the Policy is more of an operational guide rather than an underpinning strategic document.

The Policy is based on broad principles which can translate into strategic frameworks, although these principles are variously applied by the four regulatory agencies. These principles incorporate a number of considerations. A risk-based approach is reflected in identifying and targeting areas of highest risk, and responsiveness and proportionality in the regulators’ actions in relation to those identified risks. Aspects of accountability as well as principles of transparency and consistency are also reflected in the Policy. Preventative approaches are articulated in the principles of constructiveness and building capability. Whilst top managers and middle managers across the four regulatory agencies uniformly recognise the Policy as a component of the legislative change process, there is not an analogous uniform interpretation and integration of the Policy as an element in strategic decision-making processes. Regulator A expressed a view at both top and middle manager levels that the Policy had wide ranging application

as a strategic document, underpinning decision-making at a strategic as well as an operational level. This view was disparately held by regulator B, with top management considering a wider application of the policy as a strategic document than considered by middle management.

Overall, despite variations between and within regulators in the interpretation of the Policy as a strategic document, there is consistent perception of the Policy as setting an operational decision-making approach, at least at an enforcement level. The result of this level of consistency in appreciating the application of the principles of the Policy, albeit at an operational level, goes towards addressing one of the goals of harmonisation. However, applying the *National Compliance and Enforcement Policy* primarily to operational application may hinder innovation in strategic decision-making.

How participants in the decision-making process comprehend and implement the policy goals of the organisation can impact on the success of those goals (Hrebiniak, 2006). Such operational rather than strategic application of the Policy suggests that rather than interpreting the Policy principles as underpinning strategic decision-making, it is seen primarily by three of the four regulators as a guide to the processes of enforcing enforcement and compliance. Such mechanistic interpretation of compliance and enforcement policies may induce routine approaches by regulatory agencies (Pires, 2011), rather than encouraging innovative approaches to identified risks. Additionally, differing interpretations of the Policy suggest that harmonised arrangements have already started to fragment as decision-making processes are enacted at individual agency level, or even at inter-agency level.

Managing accountability

As identified in chapter 2 the implementation of NPM and NPG approaches in the public sector has seen an increasing focus on accountability and performance. Accountability is a pervasive element in public sector management including, activities of regulators. Regulators are held accountable by a range of forums that constantly scrutinise their strategic or operational decisions and actions. In many instances, this scrutiny is taken on by larger central agencies, or by central offices of mega-

departments that comprise a number of public sector bodies, including regulatory agencies. As established previously, each of the four regulatory agencies involved in this study are responsive to external bodies that provide input into the development of corporate strategic plans, where formal committees and other consultative bodies set the strategic framework for the agencies. These arrangements also include regular reporting to those agencies. Accountability is also a factor when authority is devolved to other levels of management to enable decision-making at those levels.

Regulator C has undertaken changes in its planning processes from a model of devolved operational planning in the regions to a more centralised model. The rationale for this change is to enable consistency in the decision-making process, a change that impacts on the autonomy of the regions. As one top manager conceded, the centralised planning model “does take a little bit away from the regions” (RC1TM2). The changes were required in part because of duplication of actions and commensurate perceptions by stakeholders of lack of consistency of actions by the regulator. This stakeholder perception was described by a top manager as “reasonable...criticism from different sectors of industry...that they were being targeted continually, that you might have a branch office in [one location], one in [another location] getting a different sort of response to the same sort of matters” (RC1TMM2). As a result of centralising planning the regulator has a more integrated approach to the development and delivery of preventative programs of work. This integrated approach is reflected in a greater emphasis on internal consultation, in contrast to previous approaches where those not directly involved in the formal strategic planning process were not included in the decision-making processes (RC2MM2).

By phase two the project planning approach in regulator C became more rigorous, including not only scrutiny of strategic activities, but also providing validation of both activities and assumptions. A middle manager respondent’s view of this process was expressed as follows:

this is a most rigorous process that we've ever been through in recent times. [The plans are] being scrutinised by an awful lot of people but I think it's important that they are scrutinised. I think it's important that everybody has an opportunity, or a lot of people have the opportunity, to comment on these plans, the validity of those assumptions that we make, the validity of the data that we've used and also that of the interventions that we are planning. (RC2MM3)

The establishment of more formal monitoring and decision-making mechanisms in phase two by regulator C were in response to potential fragmented decision-making, based on tensions between responding to immediate priorities and the priority of strategic decisions. This consideration was framed by a middle manager respondent as the potential for “everybody’s priorities [to] overtake that [strategic decision] priority, so with this [mechanism], that pulls everybody back into line and keeps it on track” (RC2MM2). However, one middle manager was cautiously optimistic about these changes, suggesting that the agency has had many attempts in the past to implement strategic decisions. Despite much consultation within that regulatory agency, it has always been a challenge to bring people along, the respondent describing these attempts thus: “We have had many goes, and it is always a perennial challenge. But that's what we've set up to support these plans” (RC2MM3). There are now more formal mechanisms for monitoring of actions and resources than in the past, with the establishment of clearer lines of decision-making and accountability through the establishment of a higher level executive forum. According to a middle manager “It's a forum for monitoring the implementation, for sharing the experiences of that implementation, and monitoring the effectiveness of that implementation” (RC2MM1).

Regulator D also undertakes regular review of planning and performance through weekly meetings of the top management group. This mechanism enables decisions to be made in a timely manner, and with regular review of progress, this mechanism facilitates the progress of those programs of work. As a top manager put it, decisions can “be made on the spot ... Normally it's that things are either approved or approved with conditions or a little bit more tweaking done to fine tune and then it goes back”,

but because “we have [weekly meetings] it doesn't take long for things to go through the pipeline usually” (RD1TM2).

Reporting is undertaken by regulator D on a regular basis to both internal and external stakeholders. This reporting encompasses monthly operational updates and work program reports within the regulatory agency, as well as quarterly and bi-annual reports to the organisation executive and to the organisation's oversighting body. This reporting is based on transparency and accountability, which as one top manager pointed out is an absolute requirement in the public sector (RD1TM1). However, this manager recognises the implications of public sector governance requirements of accountability, suggesting:

Because of that paradigm of compliance and accountability [in the public sector] which is a noble and necessary paradigm, but because of that, we sometimes translate it and we overcook our internal processes far too much. I'm making a clear distinction between necessary accountability...and the overly complicated, complex bureaucratic processes. (RD1TM1)

In all four regulatory agencies accountability is reflected in being able to monitor strategic decision activities and report on outcomes. Each of the regulatory agencies in this study have formal arrangements based on project, program or campaign plans developed by top and middle managers through the regulatory agencies' operational planning processes, and documented for approval by senior management.

Regulator A has centralised the development of strategic decisions, but devolves authority and accountability for implementation to the regions through program and project plans and regional plans that derive from the broader operational plan. This centralisation of decision-making that also incorporates frontline responsibility for implementation is seen as improving decision-making processes. A top manager suggests that this centralisation “has been a strong method in breaking down some of the barriers between the front-line and the development areas and policy areas and that kind of thing” (RA1TM1).

However, this view is not shared by a middle manager responsible for implementation of strategic decisions, who pointed out field staff are unable to exercise discretion in undertaking additional activities whilst there is a hiatus in the implementation of strategic decisions. As described by this manager, staff were “not able to do any small projects or small interventions in the meantime...while they are waiting for this work to be ready, because everything is on hold and they are waiting for this to happen” (RA2MM1). On occasions, despite middle management being delegated to develop strategic decisions, many details including budgeting require approval by senior managers, and hence there are delays in implementing those decisions. As detailed by a middle manager, despite “work on the draft project plan before the [implementation], ...many of the key details in the project plan hadn’t been approved...it was more a wish list of money...a project plan that covered every action...but nothing had been approved” (RA2MM1). That is, sometimes, when even the essential aspects of strategic decision plans are approved, it did not necessarily follow that the plans are expeditiously put into effect.

Similar to regulator A, regulator B also developed specific project plans for the implementation of strategic decisions. According to a middle manager responsible for one such program plan, this entailed documenting specific details of the plan, explaining these details as “deliverables so that people had a real clear understanding of where you were and what you were doing” (RB1MM2). Monitoring of strategic decision actions and resources by regulator B is undertaken through a combination of formal meetings, executive oversight and reporting arrangements and through a range of meetings and forums at the operational level.

There are two main forums for monitoring, one “mainly focused on actual service delivery and prioritising that service delivery...and...an operations report which is performance-based, based on key performance indicators” (RB1TM1). The other forum is “people planning, budget, staffing” according to another top manager (RB1TM2). In relation to the strategic decision program of work, the decision-making forum is the first arrangement, where proposals come “for review, discussion, endorsement or tweaking and endorsement. It would articulate purpose, deliverables, the events, timeframes and what impact, if any, it would have on the inspectorate in terms of resourcing”

(RB2TM1). On face value, in comparison to regulator A, such formal administrative arrangements that facilitate decision-making support the exercise of discretion of those involved in implementing strategic decisions.

A project management approach is also utilised by regulator C as an aid to accountability within the organisation. This approach is a modified version of a formal project mechanism which provides the requisite information. As described by a middle manager this process “ensure[s] that you actually provide some justification, some background for the project, the people involved and the steps in the milestones, key performance indicators” (RC1MM1). Notwithstanding these principles of accountability there are some difficulties with this approach. As multiple project plan development occurs within the planning cycle, this development is undertaken without communication between individual project managers, thus creating some duplication of effort. According to a middle manager, “there was a significant frustration expressed by senior management that the individual project managers weren't communicating among themselves to ensure that there wasn't duplication and crossover” (RC1MM1).

However, this criticism by senior management of failures in communication was seen by others as a deficiency in those senior managers' own oversighting responsibilities. One middle manager suggested that “as a result of ...project proposals going to [senior management], then looking at them and giving approval...and if there were crossovers then they were the ones who had all those projects in front of them and were armed with the knowledge of it” (RC1MM1). Unlike the experience of regulator B, and similar to regulator A, there were frustrating delays in regulator C in the decision-making process, as senior managers query the implementation of strategic decisions, even though having originally provided approval.

Evidence and evaluation

The translation of risk-based policy into strategy requires the identification of risks. The four work health and safety regulators have access to large data sources including both worker's compensation data and workplace injury and illness data to provide evidence of risk. All four regulatory agencies referred in their strategic planning documents to the

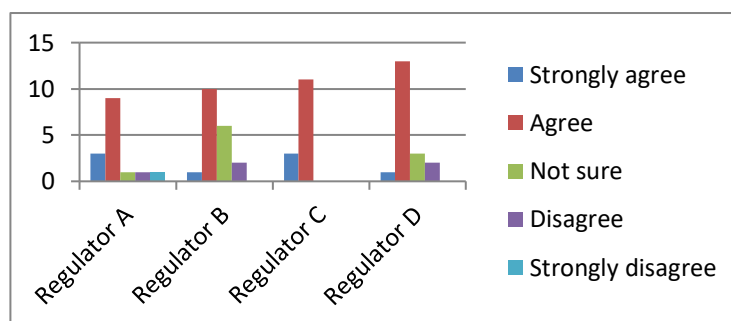
analysis of this data to inform higher level strategic direction. This use was variously described as evidence to assist in decisions about priorities (regulator A Corporate Plan 2010-2015); using data and research to gain insights into problems (regulator B Strategic Plan 2010-2015); focusing activity on high risk areas (regulator C Business Strategy 2004-12) and undertaking research to assist decision-making (regulator D Business Plan 2010-12 and 2012-13). For regulator B there was a shift in their planning approaches between phase one and phase two of the study to evidence-based decision-making. The regulator's business plan identifies their capability shifted to "intelligence-led decision-making" to enable the application of the "best combination of regulatory strategies" (regulator B business plan 2013-2014).

As shown by comments from regulator B respondents, this evidence sets and shapes strategic direction. According to a top manager from regulator B, the direction is set by the economic performance of the worker's compensation scheme. This respondent stated that the strategic direction emanates from "the scheme performance, how viable the scheme is in relation to external events such as investment and things like that as well as individual employer or agency entity performance in how well they are managing health and safety...also things that impact on their premium" (RB1TM1). For both regulator A and regulator D, evidence is derived from information relating to operational data such as incidence and injury rates, and workers compensation data (RA1TM1, RD1TM1). According to a respondent, a shift in regulator C between phase one and two of the study takes the form of using evidence from workers compensation and other data to inform decision-making (RC2TM2). Across all four regulators there is a clear focus on the interrogation of a range of data to provide a firm evidence base for strategic decisions.

Given this focus, shared understanding of the use of evidence by all those involved in the implementation of strategic decisions is integral to achieving desired organisational goals (Bryson, Crosby & Bryson, 2000). A survey of operating management staff involved in implementing strategic decisions canvassed shared understanding of the use of evidence to set the strategic direction of the regulatory agency. A questionnaire distributed to those staff included a question designed to measure the level of understanding that the organisation based its strategic planning and identification of

priorities on evidence. A five-point Lickert scale of “strongly agree”, “agree”, “not sure”, “disagree”, “strongly disagree” was used for the question “I believe the organisation uses evidence in its strategic planning processes to identify priorities”. The responses are set out in figure 4.2 below.

Figure 4.2 The use of evidence to inform strategy



As the figure above establishes, there was strong agreement across all four regulatory agencies to this question. The response rate for regulator C was 100%, with all respondents (n.14/14) indicating they “strongly agree” or “agree” that the organisation uses evidence in its strategic planning. Similarly, there were considerable levels of agreement with respondents in regulator A with 80% (n.12/15) either “strongly agree” or “agree” and in regulator D with 74% (n.14/19) “strongly agree or agree”. There were less convincing levels of agreement in regulator B with 58% (n.11/19) responding either “strongly agree” or “agree”. Despite these slight variations in levels of agreement, there was generally shared understanding across the operating management levels of the regulators’ intention of founding strategic direction on an evidentiary base.

Whilst the commonality of some of these responses was positive, there was a notable uncertainty among some respondents. Around a third (n.6/19) of respondents in regulator B and a number in Regulator D (n.3/19) indicated a level of ambiguity by responding “not sure” in relation to the question. Success is not defined by the level of management involvement but more by a clear sense of common purpose (Miller, 1997). This inconsistent level of shared understanding, and to some extent commitment to an evidence base to strategic direction, by those actually involved in the implementation of strategic decisions could affect the successful implementation of those decisions.

Attendant on accountability requirements for an evidence base to decision-making is a requirement to understand impacts of interventions developed through strategic decision-making processes. Performance reports reframed from activity based to outcomes focused indicators provide a particular insight into the role of accountability in the actions and goals of strategic decisions. In regulator B, one of the difficulties in designing and implementing preventative programs is being able to articulate and prove the outcome, or impact, of the intervention. As one manager suggested, a challenge is “managing that expectation around [quick results], this is a longer-term thing and the best evidence suggests that we go this path” (RB1MM1). Given the longer timeframe for preventative actions based on the identification of risks to show results, it is difficult to prove a direct line from the identified problem to action taken to address the problem.

One way of overcoming that challenge is to provide robust evidence and also emphasise that solutions will take time to impact on identified problems. This perspective was reflected in regulator A, stated by a middle manager thus: “If you’ve got good evidence to start with, you build a good strong business case and manage expectations around the fact that you may not get the information for a prolonged period of time” (RA1MM2). The use of objective data to provide an evidence base for decisions requires evidence to also be applied to evaluation of the impact of those decisions. It appears for these regulators, causality is as difficult to explain in the development of approaches to identified problems, as it is in the solutions to those problems. Notwithstanding this dilemma, the linking of approaches which have not yet had an impact, to problems which have not yet occurred, is dependent on the availability of evidence.

This focus on evidence is also important as it helps the regulators respond to central agency focus on activity rather than outcomes, described by a manager from regulator D as “a bean counter approach” which defines the way performance accounts are framed for reporting purposes. According to the manager “That's how they think. How many visits has an inspector done” (RD1TM1). There are attempts within regulator D to reframe the way that regulator’s actions are perceived and evaluated. This is done by providing the traditional metrics, but also by providing data that forecasts outcomes and in effect predicts the success of the agency’s actions. According to a top manager respondent, the way in which to reframe expectations about the regulator’s performance

is in “trying to drive it towards more outcome and looking at more lead indicators as well, rather than lag indicators in terms of the injury data, because that's where you get the better clues from” (RD1TM2). A similar approach is undertaken in regulator A. However, according to a middle management respondent from regulator A, senior management support is necessary in reframing the performance account of regulatory agencies, suggesting “you do need good buy in and support from senior leadership to kind of carry it until you get those results back” (RA1MM2). Such performance accounts not only require commitment to the underpinning evidence base for rendering risk-based policy, but also require overall support by senior management in reframing performance expectations.

Conclusion

Unsurprisingly, given the national harmonisation agenda and their placement within the public sector, there is little variation across the four regulatory agencies in the interpretation of government policy prior to translating into strategy. The implementation of risk-based approaches in Australia has been an underpinning principle for regulatory policy since the early 1980s. The focus on risk as an underlying principle for adoption of compliance and enforcement policies by Australian work health and safety regulators is a very compelling rhetoric. In an environment of harmonised legislative arrangements there may well be an expectation of consistency, reflected in the rhetoric around the harmonisation of the work health and safety legislation and regulations which promise uniform standards.

Regulators are paradoxically expected, as evidenced in policy documents such as the *National Compliance and Enforcement Policy*, to implement discretionary risk-based practices and also deliver consistency in implementation. All four regulatory agencies espouse the underpinning principles of risk-based regulation vested in the umbrella work health and safety legislative framework adopted by the regulatory agencies. There are differences though in the interpretation of these risk-based principles. These differences are evident in the varying approaches to applying the principles of the *National Compliance and Enforcement Policy* with three of the four regulatory agencies

interpreting the Policy as primarily an operational guide rather than a strategic foundation for decision-making.

Included in the four regulatory agencies' strategic direction, although to varying degrees and at different levels, are broader government or central agency customer service directives encapsulated in value statements and service charters. However, for some of the regulators, customer focus is more precisely articulated in strategic and operational plans as aspects of collaboration. More specifically, enacting the principles of the *National Compliance and Enforcement Policy* requires regulators to engage with stakeholders to facilitate compliance.

Engaging with stakeholders is described by the four regulatory agencies as not only a means of enabling compliance, but stakeholders are also seen as active participants in the strategic decision-making processes. Notwithstanding these factors, this engagement has implications for some regulators in managing stakeholder expectations of the decision-making process. The data suggests that interaction of public sector principles such as those that define NPG, with risk-based approaches, has particular implications for regulators interpreting harmonised regulatory policy and translating such policy into strategies and actions through their decision-making processes. For these regulatory agencies, management of diverse stakeholder expectations regarding their participation in the decision-making process propels risk considerations beyond the identified regulatory problem, into the regulator's strategic decision-making protocols and processes.

Whilst decision-making based on evidence may be perceived as a rational process, in risk-based regulatory decision-making processes the use of evidence is more nuanced, its application as an underlying principle rather than a definitive basis for decision-making (Head, 2008; Nutley & Webb, 2000). Use of objective data provides an evidence base for decisions, but also requires such evidence to be applied to evaluation of the impact of those decisions. Regulatory agency managers responsible for interpreting and applying risk-based principles to strategic decision-making tend to focus on data primarily a means of providing context specific evidence to support decisions, and less on using data for evaluation. Where there is a focus on the use of

data for evaluation, it is primarily a means of addressing accountability requirements such as contributing to performance reports framed around activity rather than impacts.

Having examined how the work health and safety agencies that comprised this study interpret harmonised policy and a risk-based approach, the following chapter now looks more closely at operational practices to translate these policies into strategies, including how decision-makers identify problems for attention and how they select and apply approaches to identify those problems.

CHAPTER 5: IDENTIFYING PROBLEMS AND DEVELOPING SOLUTIONS

Introduction

This study of work health and safety regulators' decision-making practices and processes was undertaken in the context where on one hand there was the implementation of harmonised legislation aimed at consistency in the regulation of work health and safety, and on the other hand diverse administrative arrangements across jurisdictions to implement the legislation. This chapter now addresses the first two subsidiary research questions by looking at how decision-makers within the four regulatory agencies identify problems for attention, and how they select and apply approaches to those problems. The findings in this and the following chapter incorporate various interview and questionnaire responses across the two phases of the research, sometimes integrating responses on similar topics and, as interviews progress and further data emerge, reflecting the evolution of the subjects' approach to decision-making. There is occasional duplication of some aspects of the processes of decision-making, a necessary feature to extrapolate nuances of similarity as well as differences.

As demonstrated in chapter 4, whilst the adoption of risk-based principles suggests support of discretionary decision-making by governments, regulators are also required to adopt harmonised legislative arrangements that provide consistency and standardisation. The high-level strategic planning processes of the four regulatory agencies results in the identification of regulatory problems that require planned, concentrated and coordinated approaches by decision-makers. The strategising practices and processes includes decisions and actions taken by managers who have responsibility for formulating and implementing strategic decisions that address strategic plans and objectives. In this study, the interview schedule for top managers and middle managers comprised questions covering the regulatory agencies' strategising processes, including how priorities were identified and the criteria and mechanisms by which strategic decisions were undertaken.

The term ‘strategic decision’ is used in this thesis to describe a major program of work that had been identified as important, and initiated through the regulatory agencies’ strategic planning processes. The criteria used to identify strategic decisions was they utilised evidence; actions involved multi-function or inter agency participants, and were representative of the regulatory agencies’ strategic decision-making processes. Given the role of top, middle and operating managers in the strategic decision-making process, these roles are now examined before presenting the findings from the analysis of data on identifying problems and developing solutions.

Management roles

As the analysis of data from chapter four shows, in all four regulatory agencies the top managers translate priorities as strategic decisions, which are developed and deployed to varying degrees by middle managers and operating managers. In describing their role, top managers generally referred to having broad strategy direction and monitoring roles, as well as specific business unit responsibilities. As one top manager in Regulator B responded, their role is broad, having “everything to do with regulatory services” (RB1TM1). This all-encompassing role was echoed by another top manager in regulator C, who described their role as a “broad [one]...responsible and accountable for the health and safety function [for the regulator]” (RC1TM2).

Similarly, a top manager in regulator D saw their role is to “firstly act as a member of the executive, and also to manage the day-to-day operations [of the business unit]” (RD1TM2). A top manager respondent in regulator A defined their role by direct reference to representing their business unit, stating “Broadly on the part of a divisional leadership team my group provides that directional governance type role that enables the division to set priorities, set the strategy and support the delivery of that” (RA1TM1). In regulator B, another top manager suggested their role ranges from participation in the management team, to a more active facilitation role across a range of functions. This respondent described it evocatively as “like a spider web” encompassing a range of capability support, quality control and consistency functions (RB1TM2).

When asked to explain their role, responses from middle managers were consistently aligned to the functions of implementation, including “primarily a coordination role for the [strategic decision]...and manage the design, development and implementation” (RA2MM5) and “operationalising the strategic plan...putting that into an operational type program that we can deliver out in the field” (RB1MM1). Other descriptions of middle management roles also reflect implementation, as described by a respondent from regulator C thus: “provide the strategic vision for the...programmes...and distil that down to targeting ways to interact with industry” (RC1MM1).

However, a number of middle managers from regulator A and regulator B provided descriptions of more expanded roles defined by specific responsibilities in implementing strategic decisions. These responsibilities for a middle manager in regulator B include “developing subsector specific projects, developing tools, finding best practice out in industry, publicising that, and working with industry partners whether through developing networks or working with regional inspectors” (RB1MM2). In regulator A, another middle manager set out responsibilities reflecting a greater involvement in establishing a more rigorous and informed process of delineating problems, describing these responsibilities as “setting the governance, the infrastructure...so really trying to build some rigour around how we run our [strategic decisions], getting strong data, evidence-based decision making happening early on to define the problems and identify simple solutions” (RA1MM2).

Reflecting organisational changes in regulator D, middle manager roles in phase one were different to those in phase two. One middle manager pointed out in phase one they were involved once the strategic decision was developed, reflecting “we do the primary response work responding to an incident or otherwise, we also are actively involved in the prevention initiatives which are driven primarily from metropolitan.” (RD1MM3). By phase two, there was a substantial change in middle managers’ roles in regulator D, reflecting an emphasis on the use of evidence in the development of strategic decisions. Reflecting this emphasis, one manager’s role changed from the overall management of programs to one more specifically involved in the determination of evidence. The manager described this change as “manage an area that analyses injury data and provides that information for...our own targeted ... programs” (RD2MM1).

For one middle manager in regulator C, which in phase one had previously moved operational planning in the regions from a devolved to a more centralised function, the result of this centralised decision-making was described as:

A bit of a funnel model...in that the pointy end of the funnel is the [manager] who gets all of these ideas and interventions coming down from numerous development areas in the organisation. And it is only at the pointy end that the [manager] sees well, these cards don't quite all fit together, because you've got multiple things required at the same time, or did you know that somebody else is doing something similar. (RC1MM1)

However, this decision-making process changed in phase two to a more decentralised model for delivery of strategic decisions which however maintains centralised planning and monitoring. This change was driven by recognition that excluding those responsible for implementing strategic decisions from development of those decisions resulted in duplication of actions and diffusion of strategy. According to a middle manager, their role in the strategic decision implementation process is defined by more responsibility and accountability, "to make sure that the actual implementation, and the doing of it occurs. But also it's good that all the other sections of the organisation - they can make sure that their contribution is happening and is aligned" (RC2MM2).

The role and extent of autonomy of middle managers thus varies according to their delegated responsibility in implementing strategic decisions. Some middle managers are fully engaged in framing the focus and objectives of the strategic decision, while others are only engaged once a program of work is developed, and then responsible for implementation. Despite these variations, there was a clear shift in all four regulatory agencies over the two phases of the research to devolve more decision-making authority to middle managers. The role of middle managers, whilst reflecting a degree of autonomy in designing the details of strategic decisions, also reflect a focus on communicating and interpreting information about those decisions between the operating and top levels of management (Floyd & Lane, 2000).

Involvement of operating managers in decision-making

Operating manager respondents were included in this study because of their role in the implementation of strategic decisions. They were identified by the regulatory agency to which they belonged as having this specific role, that involved co-ordinating aspects of that implementation, including supervising or directing staff involved in implementing strategic decisions. In order to identify the tasks operating managers undertook in these processes, those staff were asked in a questionnaire to “Please list three (3) key activities that you undertook in 2013/14 that were directly related to the day-to-day implementation of the strategic decisions”. The responses received in phase two of the study were regulator A, fourteen; regulator B, nineteen; regulator C, fourteen and regulator D, nineteen. Many of the responses identify roles consistent with operating management functions, such as “work allocation” (regulator A); “task reviews” (regulator A); “monitor proportions of proactive and reactive engagement work” (regulator C); “managing the delivery of regulatory services locally” (regulator B) and “approve allocation of inspectors” (regulator D).

However, in addition to activities reflecting engaging with stakeholders, discussed in a following section of this chapter, there were some responses reflecting a greater discretionary role in developing and implementing strategic decisions. This expanded role is reflected in activities such as “develop[ing] strategies based on industry trends” (regulator C); “cultivat[ing] internal and external relationships with a view to developing joint program partnerships” (regulator C); “incorporating strategic decisions into projects, plans” (regulator D) and “develop[ing] initiatives to address areas of risk to the organisation” (regulator B).

Within the group of respondents, a number of operating managers involved in implementing strategic decisions thus expressed greater strategic roles and influencing roles beyond carrying out the instructions of middle managers. Although some assert that middle managers have more strategic knowledge than operating managers (Floyd & Lane, 2000), it is noteworthy that operating managers’ responses in this study provided an account of a range of information-gathering activities on their part that reflects a depth of strategic knowledge. These aspects of their roles contribute to developing

knowledge and commensurately to influencing choice. Such activities were described variously as “organised and conducted feedback sessions with inspectors involved in the program...and collated and analysed feedback” (regulator A), “conduct research on OHS issues” (regulator C) and “ensure that strategically relevant research is undertaken” (regulator D).

Middle managers across the four regulatory agencies have varying, and for a number of respondents, significant roles in influencing strategy implementation processes through developing and deploying strategic decisions. However, the responses of operating managers also suggest authority for decision-making can be undertaken at the level of implementation, thus providing both delegated authority and opportunity for input into strategic decision-making processes.

Selecting and validating problems

The literature suggests application of risk-based approaches helps decision-makers make informed choices about which problems to attend to among the plethora of identified problems, and what alternative potential courses of action can be developed to address these problems. Choices are based on the systematic identification, assessment and prioritisation of hazards or risks. Consequently, implementing risk-based strategies initially requires the clear identification and analysis of problems as part of decision-making processes.

Selecting problems

Across all four regulatory agencies, the analysis of data shows that accurate problem definition and selection is a factor in the strategic decision-making processes. Strategic decisions undertaken by these regulators require a problem to be precisely identified before a solution, or a program of work, is developed to address that problem.

Identifying problems needs specificity on the nature of the issue, the contributing factors and the definitive causation (RA2MM5). The requirement to be precise in identifying causal factors not only enables the selection of problems, but also assists in deploying effective solutions. This requirement was observed by a middle manager

from regulator B as “being really clear about what is hidden outside the scope, so that we know what can we change...and what can't we change” (RB1MM2).

As demonstrated in the previous chapter, the four regulatory agencies that form this study generally have a similar set of attributes by which to initially identify problems. At the strategic level, these uniformly include information derived from data such as worker's compensation claims including industry claims costs, injury rates and injury severity, and workplace interactions such as numbers and types of notices issued, infringement types, complaints and audit results. This ‘lag’ data such as worker's compensation claims and number and types of work health and safety breaches provides useful intelligence to the regulators about consequences of problems, but not necessarily about causes. Consequently, these internal attributes are augmented with additional data from other sources, with the regulators taking a wide-ranging approach to the sourcing of relevant data in order to define problems more precisely. As outlined in the previous chapter, the description given by respondents of their experiences in developing preventative strategies reflect analytic practices that generate evidence beyond accounting for worker's compensation costs or tallying workplace incident rates. This approach was made clear by respondents from across the four regulatory agencies.

For regulator A, the process of gathering evidence is more wide-ranging than reliance on internal data. This process involves taking a detailed look at problems, including developing an individualised profile of an industry in order to gain a more informed appreciation of the nature of that industry. One top manager respondent from regulator A suggested that this information includes a level of detail down to “what they look like, what their work looks like, what their businesses look like, what injuries and illnesses look like, what their tasks and activities look like” (RA1TM1). Whilst this information provides insight into an industry or regulated entity, regulator A also seeks other data as a way to gather more compelling evidence as the basis for decision-making. This data comes not only from the regulator's own database, which provides a rich source of information about industry performance, but also includes access to information sources such as Australian Bureau of Statistics or other databases such as health (RA2TM1). A respondent from regulator A expanded on the search for additional sources of evidence, describing this search as looking at “other sources of data that are

in the community, different associations, different industries and different organisations in the community have data which we access, so we use that in our pool of information” (RA1TM1). This approach of gathering information from a community perspective to generate good quality evidence suggests that regulator A views evidence as context specific.

A similarly eclectic approach to gathering information is taken by regulator B. This approach involves not only the use of internal data such as worker’s compensation claims, incidents and fatalities to target intervention activities, but also research as well as stakeholder input to build an understanding of problem areas. The regulation policy of regulator B identifies the use of strategies such as consultation, segmentation, market analysis, profiling and environmental scanning to identify risks (regulator B Regulation Policy 2013). This search for evidence requires a wide-ranging exploration by regulator B. The agency also uses an intelligence framework to assess risks, using information derived from sources including worker’s compensation data, incident notifications, research, media as well as intelligence derived from field activities such as work site visits (regulator B Regulation Policy 2013). A top manager framed the benefits of this approach thus: “The analysis of the data, as well as what the entity or the employer is doing about it, is as important as the data itself” (RB1TM1). Not only does that regulator assess the performance of regulated entities in identifying problems, the behaviour of the entity is also considered. Similar to regulator A, by evaluating individual entity behaviour and compliance stances, regulator B sees evidence as context specific.

Regulator C provides an additional perspective on the application of evidence, that uses data as a means for the regulator to justify decisions. In this instance, evidence is used to refute stakeholder perceptions where these perceptions do not align to the weight of evidence from various other data sources. Whilst decision-making in practice for regulator C is now more heavily reliant than previously on information provided by industry, this information is supplemented by other data (RC1MM1). A middle manager specified: “It’s important to have the statistical analysis because if the industry is saying something is a problem and the stats say it is not a problem than obviously it’s not worth pursuing that, or you do a further investigation to see why the stats are so at odds with

what industry is saying” (RC1MM1). Another middle management respondent from regulator C affirmed evidence is derived from more sources than that readily available to the regulator, pointing out “we certainly wouldn’t just pay attention to the data. We really need that input from business but also the literature as well” (RC1MM1).

At phase two of the research another respondent from regulator C reaffirmed the importance of the use of data in that regulatory agency as providing a strong evidence base for decision-making, and pointed out a recent organisational change provides the means to access and interrogate data. This top manager confirmed “I now have a team of people that’s made up of labour market economists, statisticians and so on, and we’re able to slice and dice the data to get an understanding, a better understanding, of what’s going on” RC2TM2). From the analysis of these findings, the use of evidence by all four regulatory agencies is not only context specific, it is also dynamic to reflect changes in context, including behaviour of regulated entities.

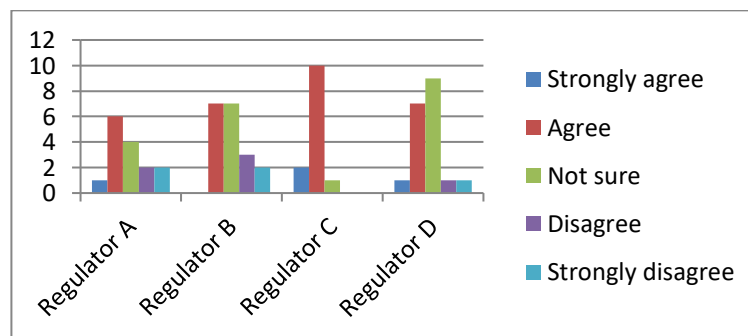
However, in a risk-based approach to decision-making, not all identified problems in the multitude of potential problems are able to be dealt with. Finite resources require problems to be prioritised in order to explain and defend the choices made by decision-makers. For regulator B, the prioritisation process is a multifaceted approach of eliciting problems from many sources. These problems are then ranked against specific criteria. The process of identifying problems is a structured one. The process was described by a top manager as starting with a “call for feedback from stakeholders and we have an inbox for people to provide feedback. We would call for feedback from our staff that are on the ground and in the field” (RB1TM2). Regulator B then accesses their own data such as number of claims, incidence rates and types and occurrence rates (RB1TM2).

Having generated this information, the regulator then uses additional data to prioritise and rank problems for attention. The process also includes consultation with other external advisory bodies, as well as incorporating ministerial priorities. These identified problems are then ranked against pre-defined risk rating criteria (RB1TM2). This approach is different from that previously in place, which did not have as strong an evidence base to identify problems. By phase two, as observed by a top manager, regulator B had “moved from the inspectorate sort of coming up with good ideas about

where resources would be directed, to moving to an evidence-based approach using worker's compensation and other data sets" (RB2TM2). The transition by regulator B to an evidence-based approach to decision-making reflects the arrangements in place by phase two of the study in the other three regulatory agencies.

The data analysis shows the application of an evidence-based approach to decision-making based on acquisition and interrogation of data and other information is, for middle managers in all four regulatory agencies, a key element of their decision-making processes. The use of objective data to provide an evidence base for decisions is central to identifying the nature of risks. In order to partially validate the interview responses from top and middle managers on the use of data to identify problems to target in the development of strategic decisions, a questionnaire administered to operating management staff involved in the relevant work programs elicited responses to the statement "I believe that the strategic decisions are based on evidence". Figure 5.1 below sets out the responses.

Figure 5.1: Evidence as the basis for decision-making



As demonstrated above, there is not as strong a recognition of evidence as the basis for strategic decisions as there is of evidence underpinning the overall organisational strategy, a factor discussed in the previous chapter and depicted in figure 4.2 in that chapter. The response rate for regulator C was quite strong, with 77% of respondents (n.10/13) indicating they "strongly agree" or "agree" that the organisation bases strategic decisions on evidence. This response corresponds favourably with the unanimous agreement within that regulator on the use of evidence in strategic planning (figure 4.2).

However, in contrast to this strong agreement on the use of evidence in decision-making, two respondents (n.2/13) profess active disagreement and one professes uncertainty. Similarly, in regulator A, in contrast to the strong agreement among respondents that evidence is used in strategic planning (figure 4.2), there is less strong agreement that strategic decisions are based on evidence, with less than half 47% (n.7/15) responding with “strongly agree” or “disagree”. Likewise, levels of agreement that evidence is the basis for strategic decisions by respondents in regulator D are slightly less strong, showing a high level on uncertainty with more “not sure” 47% (n.9/19) than “strongly agree or agree” 42% (n.8/19), compared to high levels of agreement of 74% (n.14/19) on the use of evidence in strategic planning (figure 4.2).

As summarised by the data, in regulator B there were as many responding they were “unsure” 37% (n.7/19) that strategic decisions are based on evidence, as those that indicated “strongly agree” or “agree” 37% (n.7/19). These findings, particularly from regulators A, B and D, reflect a lack of agreement from the operational level with the professed understanding by top and middle managers, discussed previously in this chapter, that evidence is central to the development of strategic decisions. In regulator C, the congruity of understanding for all levels of respondents may be explained by the occurrence at the time of a major strategic realignment to a preventative approach within that regulator, reflecting the organisation-wide communication of that approach as part of the realignment process.

When the questionnaire responses by operating managers are considered in relation to interview responses by top and middle managers as to the use of evidence as a basis for decision-making, an anomaly emerges in the level of appreciation of the application of such evidence. Whilst the wording of the question in the questionnaire does not provide for operating manager respondents to express their understanding of the consistency of such application, nor to the types of evidence used, interview responses from middle managers point to a wide use of evidence in informing strategy. However, overall the operating manager questionnaire findings concerning the use of evidence to inform strategic decisions indicate there is a lack of concurrence between those making strategic decisions and those implementing them.

The success of strategic planning requires shared knowledge and understanding of organisational strategies and actions (Bryson, Crosby & Bryson, 2009, p.176). Risk-based regulation suggests that decision-making encompasses not only a consideration of objective data, but also evidence derived from information provided by stakeholders. Dealing with this information can create added complexities in decision-making processes in accommodating often conflicting perspectives. As demonstrated by the data, the clarity of use of evidence and level of detail of application provided by the interview respondents in forming strategic decisions is not uniformly shared by those responsible for implementing those decisions.

Validating problems

The wide-ranging search for information in order to assist the regulatory agencies to make informed choices about which problems to attend to is also validated before using the data as the basis for decision-making. Top manager and middle manager respondents across all four regulatory agencies refer to validating data, both within and outside the regulator, as part of the process to confirm information used to identify and specify problems. This validation is undertaken through a staged process of checking and rechecking the data with industry stakeholders. A middle manager from regulator A described the validation process thus:

We set about validating that data and we did that in a number of ways. So first of all, we went out and spoke to the big industry players, so the employer associations, the unions, key suppliers and large business to make sure that what the data was indicating, were the problems in the industry actually resonated with them and they saw that yes it was or no it wasn't because some of the data was quite difficult to interpret. (RA1MM1)

Similarly, for regulator C, a key element of the strategic decision-making process is intelligence from stakeholders, which involves establishing stakeholder feedback mechanisms to validate assumptions about the interpretation of data. This feedback includes a series of focus groups comprising participants from industry sectors

identified from the evidence as being priority sectors. The purpose of the focus groups is to enable representatives of relevant industry sectors to provide input on the assumptions made by the regulator from the interrogation of the data (RC2TM1). At times, this validation can result in changes to strategic decisions. When detailing the implications of the results of input from focus groups, a middle manager conjectured such input may “change the design of a program. It may change the direction that we go in. Or give us some ideas for the future” (RC2MM3). This response to information derived from stakeholders suggests that such information is as compelling as the evidence derived from other data sources in formulating strategic decisions.

A similar approach is taken within regulator A, where after validation of the data is undertaken at a key stakeholder level, the data is also then taken to field staff. A top manager explained this aspect of the development of strategic decisions by referring to the agency’s procedure of engaging with their own regional staff. These informal mechanisms provide additional validation from the unique on-the-ground perspective of inspectors who interact with regulated entities on a regular basis. A top manager described the process as making the data and research available to inspectors and requesting them to apply their experience in the field to assessing and interpreting the information (RA1TM1). This approach in validating data from the inspectors’ perspectives generates on-the-ground information that might not necessarily be reflected in other data, such as claims (RA1MM3). The informal nature of checking data used as the basis for making decisions is a dynamic one, eliciting and interrogating multiple aspects of potential problems. A middle manager described this process thus:

The inspectors are a really great source of information from on the ground, because if you're getting notifications they may be underreporting...in terms of those sorts of things... You might actually find that there is more of an issue once they go out. Because you're actually able to ask questions and get to the workers on the ground and have a chat to them about what is happening at the coalface. (RA1MM2)

Validation from inspectors or other field staff is also undertaken in regulator C as part of the strategic decision process. This validation encompasses both development and delivery of strategic decisions. As described by a middle manager, “A big part of any campaign is about getting feedback from the Inspector about what is good practice happening out there? Or whether the direction we’re taking is valid or not, it’s a two-way street” (RC1MM2).

The data analysis shows that for regulator A and regulator C, validation of information by a range of internal and external stakeholders provides a layer of evidence in identifying problems for attention that goes beyond the mere interpretation of response data such as incident and fatality rates, or type and extent of injury. It also addresses principles of transparency in decision-making which underpin risk-management approaches. Additionally, precise identification of problems assists in generating effective solutions (Sparrow, 2000). The application of eclectic modes of solving problems, selected through more dynamic modes of identifying problems, suggests innovation in the way in which those two regulators select and apply approaches to problems.

Selecting and applying approaches to address problems

There are a number of tools, or solutions, available to regulators when designing approaches to identified problems. These include regulatory tools such as information and education products and services as well as incentives, including monetary incentives such as subsidies, to encourage and assist compliance; licensing, registration, certification, exemptions and accreditation to facilitate compliance; and inspection, investigation and other intervention protocols and procedures, including audits, to correct and deter non-compliance (Freiberg, 2010; Salamon, 2002). The application of solutions is determined by the approach to the problem, that entails deciding what to utilise from the broad range of compliance instruments available, or designing other more tailored approaches to the problem. The selection and justification of the appropriate combination of internal and external tools to apply to each problem is therefore important in developing and implementing effective preventative strategies.

In this study of four Australian work health and safety regulators a number of top and middle manager respondents claimed they engage in seeking more tailored approaches to problems, rather than applying standard approaches from the traditional toolbox. For regulator B, defining the problem precisely assists decision-makers in developing good evidence-based solutions to address the problem. This recent approach in regulator B is unlike previously, whereby pre-determined approaches were applied to problems. A middle manager respondent describes this previous approach to addressing problems as “I think one of the challenges in the past is that we’ve gone, we’ve got an issue with X therefore we need to do Y” (RB1MM2). Being able to now tailor the choice of tools in developing approaches to problems is critical to the design of effective interventions by regulator B. This choice of tools is related back to the nature of the identified problem. As a middle manager described: “It depends on the nature of the [strategic decision] as to what suite of tools are applied against that particular problem.” (RB2MM3). According to a top management respondent from regulator B, the use of tools depends on the stakeholder (RB2TM1). The data suggests that for regulator B, the tools used in developing approaches to problems are supposedly tailored in a fit for purpose approach.

It was also suggested by a respondent from regulator D interviewed during phase two, that discretionary use of tools implemented as part of the interventions is tailored to specific issues identified within that jurisdiction. Slightly different from that undertaken previously, this tailored approach reflected the differences between States and Territories in work health and safety legislation at that time. The previous approach involved taking standard tools and applying them to problems as a means of demonstrating consistency. A middle manager described the use of tools thus: “We’ll develop a tool and everybody will use the same tool, so that we can compare that sort of thing with different states, probably because of the different legislation in each state at that time” (RD2MM2).

By phase two this routinised approach to developing approaches to problems had, according to that respondent, changed to a more tailored approach that allows more discretion in the choice and application of tools. According to this respondent “There is [now] a lot of discretion in what we do” (RD2MM2). However, this discretion is framed

within a set of guidelines on how to apply various tools, hence giving the appearance of discretion but in effect limiting exercise of this discretion within a specific framework. According to a middle manager the strategic decision project team:

has always used the full suite of tools available to them whether it be the instruments of a statutory nature, whether it be a prosecutorial action, whether it be advice or education seminars, there is a level of discretion but there's a framework around the discretionary powers and the discretionary options. (RD2MM3)

Similarly, in regulator A, once the problem is identified the regulator, with the regulated entity, arranges the type of solution to implement from the range of tools available to target identified problems (RA1MM2). The application of existing tools does have an element of tailoring, in consultation with the targeted industry. One middle manager explained this consultation thus: “In terms of making that work, we have had quite detailed and sometimes quite rigorous discussions and debates about what will work best for industries, for various industries. That consultation led to looking at what tools will work and won’t work” (RA1MM2). Whilst regulator A appears to allow a greater level of discretion in the development and application of approaches to problems, they are also limited to the use of available tools.

Despite being limited to the choice of available tools, according to all four regulators an aspect of developing tailored approaches to problems is to validate the underpinning assumptions of those approaches. This is done by piloting or trialling tools identified for use in strategic decisions. Piloting is thus an integral part of the development of strategic decisions. Such piloting includes evaluating the application of tools in order to assess if the approach works, so as to not perpetuate using tools that may be ineffective (RC1MM2). In regulator B, this idea of piloting is fundamental to the development of approaches to identified problems. One middle manager suggested “We do pilot the tool...whatever tool we’re using” (RB1MM3). In addition to testing the efficacy of the tool, such piloting also provides a degree of accountability. One respondent suggested the piloting of tools results in “a greater sense of being able to measure [strategic decisions] and being a bit clearer on objectives and outcomes” (RB1TM2). The

approach by regulator B to piloting is described by a top manager as “making sure that everybody is delivering the same kind of product as well as by sharing internally experiences and learning as we go. So, we’re using it as a channel for learning and improving” (RB1TM1). Consequently, for this regulator, piloting also serves as a mechanism for ensuring consistency, as well as for evaluation purposes.

This importance by regulator B on determining the impact of the use of tools leads to a greater focus on building evaluation in from the start so the regulator understands the exact nature of actions undertaken, including the nature of the targeted problem and the potential solution. Embedding evaluation into decision-making means the regulator can intervene in the process as soon as it is discerned that something is not working.

According to a middle manager, “we can close off something effectively, because we know how to close it and we know what we are targeting” (RB1MM1). Whilst both top and middle managers in regulator B identify benefits in piloting, a middle manager perspective sees piloting as part of developing tailored approaches to problems, whilst the perspective of a top manager is more aligned to evaluating performance outcomes. These perspectives perhaps reflect the role of top managers based on articulating and setting strategic objectives (Floyd & Lane, 2000), with middle managers translating these objectives as strategic decisions, which they develop and deploy.

Regulator D also pilots its approaches to problems, but with an emphasis on garnering feedback from stakeholders and encouraging them to subscribe to the development of approaches. As described by a middle manager “We ran the pilot just as this is the concept, these are what we would like [the stakeholder] to be engaged with, we’re looking to tap into your knowledge and we’re looking for you to share your knowledge” (RD1MM3). This engagement mechanism provides an opportunity for stakeholders to provide input into defining the problem as well as contributing their own perspectives on potential solutions. According to another middle manager “It’s all about letting people from all sides, all the different stakeholders have the opportunity to say and to talk about their understanding and what they’ve done and what they see as problem areas” (RD1MM2). However, this consultation has to have a strategic focus on developing specific approaches and not be merely a general conversation about opinions or ideas (RD1MM3). The interview data suggests that for regulator D, incorporating

stakeholder feedback is seen as an element of framing approaches and not simply a means to garner opinion about possible actions.

In regulator A piloting of approaches to problems is optimally used to ensure tools used in the development of approaches are effective. As one middle manager pointed out in relation to a pilot project in that regulator, “we do a bit of testing of those tools to make sure that they fulfil the needs” (RA2MM4). Despite this notion of best fit, the outcomes of the pilot were applied across a number of work programs, rather than individualised. The process was described by a middle manager as initially, “a very small-scale pilot” which resulted in a model that has “now been applied to three industries” (RA1MM2). To this extent, piloting of tools by regulator A is about testing the efficacy of the chosen tools to then deploy across multiple industries, rather than piloting the tool as part of a tailored approach.

The analysis of interview data showed that the application of traditional methods including the use of pre-determined tools was suggested by respondents in all four regulatory agencies as being ineffective in dealing with the range and complexity of problems uncovered as part of a risk-based approach to decision-making. However, whilst designing tailored approaches to identified problems is an intention consistently expressed by respondents, a closer examination of strategic decision documentation reveals these approaches are selected from the habitual tools available to the regulator.

A review of strategic decision project plans of the regulators shows these tools take the form of standardised workplace-oriented tools such as inspection checklists and information material (regulator B); workplace assessments and workshops (regulator C) and management systems audits and forums/workshops (regulator D). In these instances, there are defined outcomes to accommodate reporting and monitoring requirements. However, deliverables are also specified, reflecting such approaches are predefined rather than open-ended. The four Australian regulatory agencies that formed this study hence deviate from the desirable approaches identified by Pires (2011) and Coslovsky (2011), in that those agencies rely predominantly on the standard range of tools available from their regulators’ toolkit, rather than seeking alternative open-ended approaches to problems.

In one exception, there was an attempt by regulator A to develop approaches and use tools in a more open-ended approach. In phase one of the study the strategic decision process included developing action plans with industry. These action plans were comprehensive and inclusive of business risks including project and staff safety risks, but were more open-ended in terms of deliverables and outcomes. The plans focused on disaggregated risks that defined problems precisely. The actions were framed around outcomes that required tailored approaches to be developed and delivered at certain times throughout the plan period, rather than specified outputs. However, by phase two of the research this approach had changed, aligned to a replacement of the organisation's chief executive officer (CEO). A middle management respondent made this alignment clear, describing the initial approach thus:

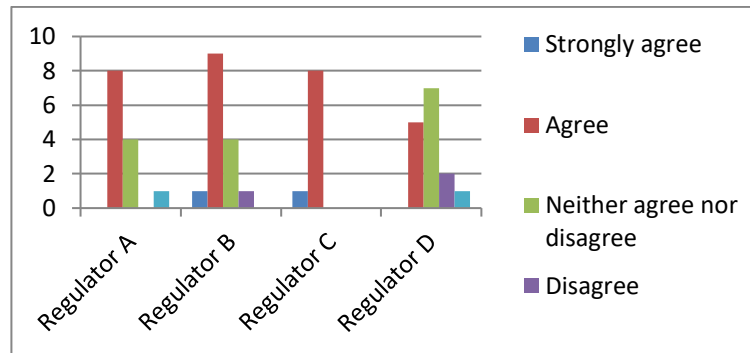
The focus was a bit different in that the CEO at the time... was more about, was very much into innovation and coming up with new things on how to tackle the same old problems. So it was like we would come to another publication and we can't do rebates or things that we've already done [the CEO] would be like "So what's so new about that?"...The expectation was to come up with innovated and new things that we hadn't trialled before.
(RA2MM3)

However, according to this respondent, the change in CEO meant a change in emphasis from tailoring approaches to problems to tailoring existing tools to the problem. This phase two change was described by that respondent thus: "Things have changed, and now it's, now the sense is whatever we're doing or we know we are doing right or we know it's working and we know how to do it, so we will just tailor it to the industry" (RA2MM3). Despite the former approval to progress the search for approaches to problems in an open-ended manner, the new CEO overturned this approach. Accordingly, the strategic decisions under development in phase one, had by implementation in phase two reverted to the old, and perhaps comfortable and safe, ways of applying approaches to problems.

A more supportive position by senior management in enabling a search for approaches to problems is evident in responses from middle managers in regulator B. In addition to consulting with stakeholders in identifying and confirming problems, this regulator also consults with stakeholders in developing and tailoring approaches to problems. This involvement is an important aspect in gaining their validation of the strategic decision (RB1MM2). The advantage of this engagement is also being able to access valuable resources and knowledge by linking into stakeholder knowledge and experience (RB1MM3, RB1MM2). This stakeholder engagement approach is seen as innovative to the development of approaches to problems, and is supported by the regulator's senior executive. As a middle manager contended, "We were lucky in that we were given perhaps a little bit of latitude. Not a lot of stuff is controversial but I guess it was doing something a little bit different" (RB1MM2). Within regulator B decision-making processes, management support opens up opportunities to expand ways of developing approaches and using tools.

To gain perspectives of the experience of those responsible for using tools in developing and/or implementing approaches to identified problems, a questionnaire distributed to operating managers directed those who responded "yes" to the statement "I am familiar with the *National Compliance and Enforcement Policy* as a nationally endorsed policy that sets out the approach work health and safety regulators will take to compliance and enforcement" to the second part of the question, "I believe that the tools identified in the *National Compliance and Enforcement Policy* are used effectively by (the regulator) in developing solutions to regulatory problems. (Note: tools refer to the range of actions that are available to the regulator to encourage and assist compliance)". As detailed in chapter 4, the *National Compliance and Enforcement Policy* provides a framework for developing strategies and selecting tools, but is silent as to which tools, processes and strategies to implement. This survey question was designed to elicit responses from those involved in implementing strategic decisions as to whether they agree that the selection and application of tools used in those strategic decisions are effective. A five-point Lickert scale of "strongly agree", "agree", "neither agree nor disagree", "disagree", "strongly disagree" was used. Figure 5.2 below sets out the responses.

Figure 5.2: Effective use of tools



As revealed above, there was a strong degree of concurrence among respondents from three of the four regulators that there is an effective use of tools in developing approaches to identified regulatory problems. In particular, in the case of regulator C, there was unanimous agreement with all respondents either indicating “strongly agree” or “agree” (n.9/9). Respondents in regulators A and B also show strong support with a preponderance of “agree”. However, this level of support is offset by a degree of uncertainty in respondents from regulator A, with just under a third indicating “neither agree nor disagree” 31% (n.4/13). A slightly less number of respondents in regulator B also indicated “neither agree nor disagree” 27% (n.4/15). Respondents in regulator D are the most ambivalent, with just under half (n.7/15) who indicate “neither agree nor disagree”. This regulatory agency also has the highest level of disagreement of the four regulatory agencies, with 20% (n.3/15) indicating either “disagree” or “strongly disagree” with the statement that there is an effective use of tools in the design of solutions to identified regulatory problems. This level of ambiguity may derive from the recent changes in that regulator to expand beyond the traditional use of tools, described by one respondent as “look[ing] for more effective and efficient ways of providing the same service” (RD2MM3). These changes were wide ranging, impacting on the whole regulatory agency, and it is possible that the ambivalence and outright disagreement reflected perspectives of staff disaffected by those changes.

From the data presented in figure 5.2, the implication of operating manager responses regarding disagreement or ambiguity is significant. The questionnaire respondents are all involved in the implementation of strategic decisions, albeit to varying degrees. Their described roles are to contribute to the development and/or delivery of approaches

to identified problems. These activities require numerous decisions, including “what competencies to seek out, what types of results to expect, and how to choose when and how to cooperate with others and around what aspects of the task” (Sparrow, 2008, p.15). An appraisal of the relevance of the tools available to respondents was therefore necessary, in order to ascertain if tools are used either as specified, or in some instances open to being uniquely crafted to use in approaches to identified problems.

The difference between regulator C and regulator D is the most pronounced, with respondents from regulator C demonstrating unanimous agreement about the effective use of tools, unlike respondents from regulator D who show the highest level of disagreement or ambiguity. This is an interesting result which was not able to be further pursued in this study. However, from the questionnaire responses it is apparent there was in place within regulator C’s decision-making processes a mechanism which enabled clarity of understanding on the effective use of tools in the development of approaches to regulatory problems. As argued previously, this clarity may be associated with effective communication within regulator C arising from a recent strategic realignment and restructure, a factor also relevant to regulator A and regulator B. Conversely, whilst regulator D also underwent similar wide-ranging changes, there may be a lack of clarity in regulator D regarding the changes, which could explain the high level of expressed ambiguity or disagreement regarding the use of tools.

Despite the initial promise in regulator A and the suggestion in regulator B of processes which would enable decision-makers to “stitch solutions together” (Coslovsky, 2011, p.78), the approaches of all four regulators in finding approaches to identified problems is restricted to the use of familiar and in some cases standardised tools. In taking a risk-based approach to decision-making, these regulators identify emerging or unfamiliar risks. However, the potential approaches to these kinds of problems are not necessarily aligned to traditional approaches. The result is the regulators are unsure or unable to apply new or different tools, and fall back on familiar and accessible tools in designing approaches to these problems, rather than pursuing innovative approaches.

Engaging with stakeholders

A common feature emerging from the data analysis of the four regulatory agencies forming this study is the establishment of formal stakeholder engagement mechanisms. These mechanisms are primarily established within strategic decision-making processes, rather than based on individual discretion. Emblematic of those mechanisms, regulator A's corporate plan recognises and articulates the relationship of the agency with its stakeholders. This relationship is specified as follows: "Our stakeholders assist us to identify emerging issues, create new partnerships, and draw on the knowledge and expertise of individuals and groups who can assist us achieve healthy, safe and productive workplaces" (regulator A Corporate Plan, 2010-2015). The process of engagement commences with traditional stakeholders such as industry associations (RA1TM1).

However, the process also incorporates engagement by local regulatory agency staff with smaller stakeholders such as local businesses, chambers of commerce and local government (RA1TM1). One middle manager referred to an aspect of their role which specifically reflects this engagement, pointing out one of their functions is to maintain a dynamic communication process. This role was described as "keep the stakeholders engaged, keep them informed in terms of what our findings were...and to get them actively participating" (RA1MM1). This engagement necessitates a more proactive targeted focus that goes beyond merely keeping stakeholders informed. A middle manager described this mechanism as targeted at local or more diverse stakeholders rather than state or national associations, in order to generate wider input, stating:

We engage with stakeholders and those stakeholders, depending on the nature and the demographics...of the industry...may include unions, industry associations. It could include community leaders in regional centres, other regulators, [persons conducting a business or undertaking]. So we're not just sticking with the old industry, employer associations, business associations, unions. (RA1MM3)

Stakeholder engagement is also a key aspect of regulator B's strategic decision-making process, from planning through to delivery. The rationale for such engagement is to ensure stakeholders affected by strategic decisions concur with the identification of problems and the chosen approaches to those problems. Accounts of engagement with stakeholders is characterised by the explanation of one middle manager that "we did quite a lot of engagement...[as]...it is really important to have that ability to engage with key stakeholders, get them on board, get them involved." (RB1MM2). Early engagement with stakeholders to validate what the data is saying is an integral factor in creating collaborative relationships to address identified problems. It is important to engage with stakeholders early to discuss and agree on identified problems before they escalate. A middle manager suggested "speaking to agencies and saying look we've seen an increase in notifications or we've seen a rise in claims. Often, they're well aware of it and they're going yes, we actually do need help here." (RB2MM3). The confirmation by stakeholders of identified problems also provides an additional level of knowledge by linking into those stakeholders' expertise and experience in different areas, in order to frame appropriate solutions.

Regulator C also has a range of formal consultation mechanisms in place that facilitates engagement with key stakeholders. This formal approach, based on engaging with powerful stakeholders such as other government departments or industries with a strong identity, enables the regulator to have a seat at the table in discussions with those powerful stakeholders (RC2MM3). As one top manager in regulator C reported, there is a comprehensive process for collaboration, commencing with "other government departments that were operating in a similar kind of space that we operate within [and also] we consulted with industry and industry associations and also internally throughout the entire [department]" (RC2TM1).

However, less formal arrangements in regional areas have their value as well, with managers in those areas forming contacts with industry sector representatives. These relationships formed at a local level enable ease of access to important information (RC2MM1). Operating managers in regulator C also have a key role in engaging with stakeholders, particularly in relation to the details of an intervention. This role has the support of top managers, with one pointing out "primarily [operating managers] will

have just as much focus dealing with the stakeholders, even more focus initially with stakeholders, developing the intervention” (RC2TM1). In regulator C, there is even a delegated role in the regional areas with the sole function to engage with stakeholders at the local level in order to gather information that is both specific and timely (RC2TM1).

This emphasis on stakeholder engagement is a relatively new approach for regulator C, evident in phase two of the study as a focus on building relationships with targeted industries. The relationship building approach was initially discussed by regulator C, both internally with staff and externally with stakeholders, by developing a draft proposal on the proposed approach, then consulting with the different stakeholder groups, as well as local inspectors (RC2MM3). The new relationship building approach was explained by one middle manager as “having that multiple visit approach where we are providing assistance and tools to the workplace is something a little bit different to what previously had been done” (RC1MM2). This different approach consists of an individual inspector developing an ongoing relationship with an identified workplace, with the inspector maintaining that relationship over a period of time (RC1MM2). Engagement with stakeholders now has more of a collaborative basis that involves regulator C forming close relationships with regulated entities over time.

The data analysis shows that as part of its decision-making processes regulator D also undertakes both formal and informal stakeholder engagement. The formal process is through long-established governance arrangements such as boards and committees. This consultation is firmly entrenched in strategic decision-making processes from the start, with the initial identification of the problem. A middle manager described this early engagement thus:

It's from the start. Once we've scoped out who the stakeholders are we would go and get their feedback on the actual project that we are proposing to put up, getting their feedback on a number of areas that they may see which is in line with what we are hoping to scope through and getting input from as early as the start. (RD2MM4)

Whilst formal processes within regulator D enable the input of stakeholders into the planning of strategic decisions, further validation of these decisions is undertaken with stakeholders through other local engagement mechanisms. These mechanisms may bring forth a particular issue which is then incorporated in the development of the strategic decision, thus providing a degree of ownership for the stakeholder. A middle manager described one such informal mechanism as follows: “Quite often you’ll find things come up because your [local industry association representative] will bring it up as an issue. So they do validate it by endorsing and supporting. And if you put something up that’s got the endorsement of [the representative] then the industry will buy-in to it” (RD2MM1).

The description by respondents of their role in engaging with stakeholders in the implementation process reflects more than simply complying with public sector client service standards. Engagement for some of the regulators is a means of including stakeholders at all stages of the strategic decision-making process. Whilst there are differences in ways in which these arrangements are embedded into the various regulators’ respective operational practices, the engagement mechanism is generally defined by respondents as a range of formal and informal interactions with stakeholders throughout the decision-making processes, from identifying problems for attention to selecting and applying approaches to address these problems.

Whilst such engagements are a mechanism to provide clarity and accountability of the strategic decisions, the corollary to such engagement is pressure to accommodate preferences of stakeholders. Managing stakeholder expectations about what can be achieved from the strategic decisions is a consideration expressed by a number of respondents in regulator A and regulator C. For these respondents, being transparent about the details and expected outcomes of strategic decisions is one way of managing stakeholder expectations. A top manager in regulator A explained this consideration thus: “We’ve tried to be very upfront about what can be achieved in the project...really clear up front with the stakeholders about what can and can’t be achieved” (RA2TM1).

However, an implication of providing this level of detail is the potential to dilute the focus of the strategic decision, or conversely expand it to accommodate stakeholder expectations by changing the intrinsic focus of the strategic decision. One respondent was concerned “the more and more that we sort of add in or the greater the expectations of each of these industry projects on delivering to something else that’s bigger and broader, the potential for the actual outcome to get watered down a bit” (RA1MM3). For regulator A, there is a tension between accountability for strategic decisions and responsiveness to stakeholders in the decision-making process.

Similarly, for regulator C, one of the implications of this plurality of decision-making is challenges in not just managing stakeholder expectations, but also managing the multiplicity of expectations. This consequence was expressed by a middle management respondent as “Lots of different people have different opinions about where we should be going. I suppose it’s about managing those different thoughts from different [stakeholders] so you can’t ignore them, but you have to manage what can actually be achieved as opposed to what your original thoughts were around it” (RC1MM2). The formal stakeholder engagement arrangements identified by regulator A and regulator C provide surety and clarity of decision-making, but can constrain the options available to those regulators in designing strategic decisions. In comparison to ‘open ended’ processes (Pires, 2011; Coslovsky, 2011), such arrangements may restrain the identification of effective approaches to identified problems due to stakeholder pressure. Despite these inherent tensions, respondents in all four regulatory agencies saw value in stakeholders being involved in the decision-making process.

Rationale and value of stakeholder engagement

Whilst the mechanisms of stakeholder engagement are similar across the four regulators, the rationale for the inclusion of stakeholders in decision-making processes is expressed differently, as is the value. Indicative of these approaches, as set out in table 5.1 below, are sample statements by middle manager respondents from each of the four regulators.

Table 5.1 Rationale and value of stakeholder engagement

Regulator	RATIONALE	VALUE
A	“active participation by stakeholders – have strong ownership”.	“help us refine what our thinking was and what was going to be practical”.
B	“lessen impact of new Act, new regs...”	“link into knowledge and expertise...”
C	“getting an idea where they stand, where they view health and safety”.	“gathered a lot of information about what they would be interested in, what actually got their attention”.
D	“We want stakeholder engagement and ownership”.	“Rather than sit down and say ‘This is the idea we’ve come up with’ it was more about ‘What do you think? Do you think there is value in this?’”.

As depicted in table 5.1 above, for middle managers from regulator A and regulator D the rationale of engaging with stakeholders is a means of generating ownership by them of the strategic decision. However, a respondent from regulator B sees stakeholder engagement as a way of reducing the regulatory burden on business, whilst a respondent from regulator C sees it as a means of eliciting opinion. There is a greater level of congruence concerning the professed value of such engagement. This value is characterised as engaging with stakeholders to elicit the requisite knowledge needed to address the challenges of addressing problems, including developing approaches to intractable regulatory problems. These values were typified by comments based on confirming the strategic decision and providing input into the generation of approaches, such as “help[ing] us refine what our thinking was and what was going to be practical” (regulator A) and “link[ing] into knowledge and expertise” (regulator B).

However, regulator C differentiated the value by suggesting rather than engaging stakeholders with pre-determined problems, they engage in order to elicit input into the identification of problems and the development of approaches, by ascertaining “what they would be interested in, what actually got their attention” (Regulator C). Notwithstanding this difference in the expression of the value of engagement with stakeholders, the overall value is collectively perceived as adding to the legitimacy of the decision through generating ownership by affected stakeholders. The decision-making environment includes stakeholders who exert pressure and influence in defining the value of transactions delivered within the public environment, but by their participation provide legitimacy and support (Moore, 1994, 1995). Engaging with

stakeholders to elicit their support and endorsement of strategic decisions provides the four regulatory agencies with that legitimacy.

Nonetheless this value proposition can be difficult to sustain. Whilst there are benefits in engaging with stakeholders, such engagements have implications for the way in which strategic decisions are implemented. Including stakeholders in the processes of decision-making can enhance the quality of the decision, however their inclusion can also derail a decision in various ways that raise questions about the efficacy of the strategic decision, including through “deferred reaction” (Nutt, 2000, p.103).

Paradoxically, given the strategic focus by regulator A on engaging with stakeholders, there was a modification in this engagement at the instigation of a stakeholder. In detailing changes to strategic decisions which reduced involvement by an industry stakeholder, a top manager in regulator A pointed out this reduction was because “It became very, very clear that in terms of engaging with industry, they didn’t have the time or the want to engage a number of times on these things” (RA2TM2). This change had been driven from the Minister as well, in response to stakeholder concerns about the regulatory agency’s expectations regarding the stakeholder’s level of involvement. According to the top manager, “We really had quite a bit of push-back from the Minister saying [reduce the engagement with the stakeholder]” (RA2TM2).

Consequently, the involvement of the stakeholder was modified to reduce their contribution to the strategic decision. As explained by a top manager, the changes to the strategic decision were in order “to meet the feedback that our customers were giving us, yeah, happy to help but we’re not going to help too many times” (RA2TM2). Whilst some stakeholders initially agreed to involvement in strategic decisions at the planning stage, this contribution was discretionary and time limited. Once it became apparent that significant time was required, the decision to be engaged was rescinded or modified. Engaging with stakeholders provides an opportunity for the regulators to influence the expectations of those stakeholders, but contradictorily it also makes the regulators vulnerable to changes which are more aligned to stakeholder considerations that may not line up with the original scope of the strategic decision.

Another implication for decision-makers when engaging with stakeholders is how to manage expectations created from that engagement, particularly where it derives from an enabling rather than a punitive approach. In a regulatory environment based on risk considerations and predicated on engagement with regulated entities and other stakeholders to identify problems and develop approaches to those problems, this is an important distinction as there are different evaluation frameworks which apply to such relationships. For regulator A, a benefit of such expansion enables refinement of assumptions about the nature of the problem and the proposed solution. Such inclusion of stakeholders in developing and implementing strategic decisions was noted by that top manager as requiring the regulator “to be really clear up front with stakeholders about what we can and cannot achieve” (RA1TM1). Accordingly, one of the ways in which this is achieved is seen as being explicit about the details, including the expected actions and outcomes of such strategic decisions. This was explained by that top manager thus:

build[ing] better stories of reporting that enables them to see that things are actually happening...and also managing their expectations about time, how long things will take or won't take, following up and...also at the same time trying to build some quick wins where we can along the way, to ensure that there is a level of excitement that there has been progress.
(RA1TM1)

However, such engagement was perceived differently by a middle manager in regulator A. This manager suggested that senior management actions do not match the rhetoric, as their expectations are ultimately driven by timeframes and the requirement to report on actions taken, rather than working collaboratively with stakeholders towards approaches to those problems. This manager defined these priorities as amounting to calculations “in terms of whether it's going to work in reality, [based on] the demands of the executive of the organisation to deliver things on certain dates irrespective, you know, of how much work is involved” (RA1MM3). One implication of this demand for action is a pressure to escalate activities in order to generate the perception of progress. According to a middle manager respondent “in some cases if they're not seeing

something delivered over that period of time, they want us to move faster” (RA1MM3). The data analysis shows that creation of expectations about actions rather than outcomes can compromise the focus of strategic decisions, particularly where stakeholders are engaged in developing and implementing approaches to identified problems.

Engagement is influenced by the ‘authorising environment’, an environment that comprises the stakeholders, customers and citizens exerting pressure and influence to provide legitimacy and support for those undertaking transactions (Moore, 1994, 1995; Moore & Khagram, 2004). This environment defines the public value as quite different from other value considerations such as service quality. The difference is seen in the nature of the relationship where a stakeholder may also be a regulated entity and thus the relationship is complicated by the coercive aspect of regulation. Engaging with stakeholders in a dialogue about compliance not only influences decision-making processes and outcomes, but it also distributes decision-making responsibilities across more parties.

This engagement can be risky as well as complicated, as on one hand regulators are driven by central agency requirements to engage with their so-called customers or clients, whilst on the other hand, they utilise a level of coercive power, or the threat of such, in those engagements. Additionally, involvement of external parties in decision-making processes highlights the potential for regulatory capture where regulators and regulated entities may be entangled by close relationships that develop as part of communication and consultation processes (Johnstone, 1999; Makkai & Braithwaite, 2011). Notwithstanding the sometimes formal nature of this distribution of decision-making and consequent shaping of outcomes through engaging with multiple parties, such engagement was identified by both middle management and operating management as integral to their roles.

As discussed in previous sections of this chapter engagement with stakeholders is undertaken at a range of levels throughout regulators’ planning processes, which include developing and implementing the programs of work arising from strategic decisions. Engagement with stakeholders is also evident in the articulation of roles of those involved in implementing strategic decisions, both at middle management and operating

management levels. Middle managers have been identified as relationship managers (Floyd & Wooldridge, 1992), a role echoed however by a number of operating manager respondents in three of the four participating regulatory agencies.

Operating managers were asked in a questionnaire to “List three (3) key activities you undertook in 2013/14 that were directly related to the day-to-day implementation of strategic decisions”. Responses relating to engagement activities from operating managers showed a surprising level of similarity to activities of middle managers in relation to stakeholder engagement. Activities listed by those operating manager respondents included “engage with stakeholders on what is best practice of minimising/eliminating risks and hazards” (regulator B), “engagement with stakeholders” (regulator C) and “developing relationships with stakeholders at all levels” (regulator D). These activities suggest a less formal aspect of stakeholder engagement than models described by middle managers as part of the strategy development process, or arrangements set out in regulatory agencies’ strategy and planning documents. At the operational level, such discrete purposeful relationships with stakeholders help the regulator to effectively implement strategic decisions. Conversely, as with the overall engagement with stakeholders, there are additional implications arising from this engagement.

Implications of engaging with stakeholders

In the instance of the four regulators that form this study unique attributes including those of jurisdiction and administration are factors in deciding on which risks to concentrate attention and resources. One unique attribute is the level of stakeholder engagement and ultimate involvement in strategy development, and the resultant impact on decision-making. This participation and pluralism reflects aspects of NPG, by the inclusion of stakeholders in the development of policy, the implementation of strategy and associated decision-making processes, as well as an increased emphasis on accountability of decision-makers in these processes. Whilst risk-based regulation is characterised by systemised decision-making frameworks such as risk matrices, the nebulous nature of risk is typified by uncertainty as to occurrence and consequences.

However, every identified risk cannot be addressed, so risk-based regulators make choices as to which risks are dealt with.

Some respondents specifically identify involvement of stakeholders in decision-making processes as a particular aspect of considering and making choices as to which risks to address. This involvement was identified as a factor within regulator D, that created tensions between the often-competing expectations of multiple stakeholders. One top manager described the challenge thus:

Everything we do is too much interference from a business or workplace's point of view and they have very forceful advocates who lobby on behalf of the business community. So, the government, the regulator, is always sandwiched in the middle of that and custodian on behalf of the whole community of trying to keep the equilibrium right, between people having a viable economic state, or economy, which we say of course is only enhanced by having better prevention in place, compared to other people's expectations, where we are not doing enough, we should be doing more, we're doing the wrong things or we're not doing things well or whatever. (RD1TM1)

Commensurately, being responsive to such political influences impacts the ability of the agency to deliver on planned activities produced from the strategic decision-making process. A series of major incidents caused regulator B to prioritise reactive work over the planned programs of work that resulted from the strategic decision-making process. This imperative was described by a top manager as the regulatory agency being “in mainly reactive mode so far to allegations, complaints, media reports, information received from unions, from the community, and the Minister's office, that kind of thing” (RB1TM1). This pressure on government to ‘do something’ is heightened by intense, if short-lived, media attention on incidents or complaints that are seen as urgent by stakeholders.

This sense of urgency to respond is aligned to the influence of stakeholders, with those having power and legitimacy compelling responsiveness on the part of the regulatory agency. In responding to such pressures regulator B diverted resources from approved strategic decisions which were underway, in order to tangibly demonstrate response and appease demanding stakeholders. A middle manager respondent in regulator B made this point, recounting that frontline resources of the regulator had been diverted “as a result of a high-profile issue that occurred during 2013” (RB2MM1). This middle manager went on to explain “When it first happened, you could almost say that we threw everything at it” (RB2MM1). Such reactive modes to high profile incidents mean that resources allocated to other work, such as projects developed from strategic decision-making processes, are either put on hold or modified.

A number of the respondents attempt to accommodate the potential for such situations by making allowance for contingencies in their strategic planning, which includes application of risk-based approaches beyond the design of compliance strategies. Indicative of this consideration, regulator A took on a risk-based approach across broad planning and implementation processes. A top manager respondent highlighted the challenges in maintaining the focus on risk in an environment of conflicting priorities, pointing out:

We need to assign the resources we have to those things that are posing the greatest political, social, economic risk to the community and we need to attend to those rather than other things. That’s a hard thing for people to do because people will say well what about this, this doesn’t fit, what about this, and we go no it doesn’t fit and we have to be strong about that and we need some intelligence to say that this is more of a risk than that and we should stop something else. (RA1TM1)

The planning approach by regulator B also specifically includes consideration of political risk factors in setting the strategic direction, and incorporates this consideration into operational planning and resources allocation. As described by one top manager

respondent “some [matters] are important because they are politically sensitive, some are important because there is a whole range of data to support why that's important” (RB1TM2). Regulator B undertakes an analysis of these competing risks, with weighting given to considerations other than an evaluation of specific workplace risks. This weighting includes consideration of public opinion. According to a middle management respondent from regulator B, “you assess those situations based on a number of factors, on the risks of those. Not only work health and safety, but to public perception and facts, and then allocate your resources accordingly” (RB2MM1).

Regulator D also accommodates political factors, reserving some capacity to respond to matters that arise from a level of political urgency. According to a top manager respondent political urgency is defined by “Things like the CFMEU marching on somewhere...[or]...asbestos in a kindergarten” (RD1TM1). This approach to accommodating political risks by allocating resources ‘just in case’ reflects a pragmatic consideration of political risks. This perspective was expressed by a top manager from regulator D as follows: “The reality is that we operate in a very politically sensitive environment and so we are influenced in a not insignificant degree, by the political pressures and the loudness of the voices and who has the loudest voice” (RD1TM1).

Management of political expectations whilst retaining a focus on risk-based outcomes creates some tension for regulators in their decision-making processes. Regulatory agencies are required to reflect government responses to stakeholder concerns about incidents, injuries, fatalities and other matters. These matters are often perceived as reflecting community concerns and thus governments need to be not only responding, but to be seen to be responding, to these concerns. As one top manager observed “any government instrumentality has a social licence to exist and to operate and to keep our social licence current we have to demonstrate outcomes in injury reduction. Otherwise why are we here?” (RD1TM1). The degree to which stakeholders affect an organisation’s decision-making processes is dependent on attributes of the stakeholder, categorised as power, legitimacy and urgency (Mitchell et al, 1997).

Reflecting the perennial problem of pluralism, a combination of all three of these attributes redirects the attention of the organisation to the clamour of the stakeholders' wants, as succinctly encapsulated by the comment above regarding "the loudness of the voices and who has the loudest voice" (RD1TM1). The analysis of interview data from the four regulatory agencies shows that managing such stakeholder involvement expands risk considerations beyond the identified regulatory problem into the regulator's interactions with those stakeholders. In considering this populist element of decision-making, risks are not confined to the identification of work health and safety risks, but also to the management of political risks.

Other factors identified as tensions in engaging with stakeholders relates to perceptions of the role of the regulator in undertaking its compliance functions. This tension presents as differing expectations between *enforcing* compliance, in effect directing regulated entities and *enabling* compliance, based on assisting and supporting regulated entities to comply. Some respondents expressed the view that credibility is a critical factor in the management of strategic decisions, particularly in relation to engaging with regulated entities in enabling compliance. According to a middle manager from regulator D:

As the regulator, we have to be seen as capable and credible in all the areas of what we do whether it be enforcement, we need to be able to do that properly and do that well and do that fairly and within the boundaries of good governance. Whether it be typical day-to-day enforcement or prosecution or whether it be education, whether it be support and the advice and the prevention. It's a broad task and we need to be seen as credible in all of them. (RD1MM3)

The manager summed up the situation with the following words: "If you can establish credibility within your profession then by default you establish organisational credibility" (RD1MM3). One approach to ensuring credibility is to have common agreement with stakeholders about expectations for participation in strategic decisions. As one middle manager encapsulated, "clearly delineate what this is all about, clearly

inform, predict the expectations or the forced expectations and put them on the table so that you don't walk away. No one, no party, walks away from the conversation wondering what it was about and what we should do” (RD2MM3). This common agreement requires the decision-maker to be clear about expected outcomes, including compliance outcomes, so that there is no ambiguity from either of the parties as to expectations.

The data analysis suggested that trust is a key factor in these interactions with affected parties as part of the process of developing strategic decisions. As one middle manager in regulator C asserted, trust considerations are key aspects in ensuring credibility:

it became apparent that [stakeholders] were very suspicious of the regulator and they wanted to be sure that they could trust the people within [the regulator] to, I guess, understand what their needs were and not go off on some tangent which is irrelevant to their business. (RC1MM1)

Trust is based on being open and up front about the capacity of the regulator to deliver on the agreed expectations, a consideration seen as a critical element in maintaining credibility (Braithwaite and Makkai, 1994; Coslovsky, 2011; Pires, 2011). According to a middle management respondent in regulator C, credibility is about “setting those expectations and trusts...and I think part of that is about honesty. You know, we are not going to be all things to all people at all times” (RC2MM3). One of the means of establishing and maintaining credibility is to ensure the regulatory agency is equipped to respond with adequate actions and relevant tools.

Being able to respond with appropriate strategies and tools assures the stakeholder that the regulator has the capacity to take action and deal with the multitude of regulatory problems to be addressed. This was described by a middle manager in the following terms: “You're always getting people wanting the regulator to do something, and I think having the plans and having the tools ...then we can use those to manage stakeholder expectations” (RC2MM3). In the decision-making process, the alignment of aspects of the authorising environment including stakeholder expectations, with the task

environment comprising the regulators' tools, processes and strategies, is an important factor in ensuring that the public purpose of the regulatory agency is achieved (Moore, 1995).

Conclusion

This study makes a distinction between top, middle and operating managers for the purposes of distinguishing their roles in the processes of decision-making, so as to frame the interview and survey questions according to these roles. In practice however, as reflected in the responses from operating managers about their roles in the day-to-day processes of decision-making, the roles of middle and operating managers are not as easily distinguishable, with a number of operating managers reporting a level of authority and autonomy that reflected that of middle managers.

The translation of policy approaches, such as risk-based regulation, involves using problem-solving methods through the strategy planning process, and shaping details of implementation through operational planning processes. Processes of problem identification are informed by a range of evidence beyond the regulatory agencies' own operational data, and include engaging stakeholders to validate the choice of problems. Such use of evidence is context specific, but in reflecting changes in context such as stakeholder behaviour and concerns, the use of evidence is also dynamic. The involvement of stakeholders across the strategic decision-making process thus creates a range of additional tensions that require consideration and adjustment in the regulators' decision-making processes.

The inclusion of stakeholders in decision-making processes expands risk considerations beyond work health and safety risks and business risks, into a more complex risk environment that accommodates political risks. In this process risks not only have to be identified and addressed, but various tensions arising from aligning strategic purpose, stakeholder expectations and operational capacity also have to be managed (Moore, 1994, 1995). The successful implementation of strategic decisions relies on engaging with stakeholders and managing expectations about this engagement based on the creation of relationships founded on a number of trust considerations, rather than

compulsion. Stakeholders are also involved in selecting and applying approaches to address problems. By engaging in compliance conversations with regulated entities, the regulator can better understand the unique characteristics of that entity. Despite some implications such as perceptions of inconsistency, or of regulatory capture, these stakeholder engagements assist the regulator in devising and implementing more tailored, and indeed palatable, solutions to regulatory problems.

Notwithstanding the stated intention of respondents to frame approaches to problems, ultimately the choice of tools in developing and implementing approaches to identified problems is confined to the standard range of tools from the regulators' toolkit, rather than open-ended approaches to address identified problems (Pires, 2011). Developing innovative approaches to implementing strategic decisions can be in itself risky, and creates pressures to return to customary and familiar enforcement approaches. Where more innovative selection of tools is undertaken, these approaches can be compromised by lack of support by senior management or by a requirement to demonstrate timely progress, with the result that decision-makers may revert to the use of familiar and accessible tools.

As the findings demonstrate, the interaction of public sector principles, such as those that define NPG, with risk-based approaches, has particular implications for regulators interpreting harmonised regulatory policy and translating it into strategies and actions through their decision-making processes. These implications present as tensions between the need to respond to stakeholders across the decision-making process and the need for transparency, and tensions between various sources of information derived from stakeholders and empirical data that form an evidence base for decision-making. The inclusion of multiple stakeholders creates further tensions as stakeholders exert power and influence in the decision-making process. In such situations, regulators respond to those stakeholders' interests, in some instances at the expense of other compelling risk-based evidence. Having examined how decision-makers in risk-based regulatory agencies identify problems, and select and apply approaches to those problems, the following chapter now looks more closely at factors which, over time, influence the choice of one approach from another in the regulatory discretion options available.

CHAPTER 6: FACTORS INFLUENCING CHOICES

Introduction

The previous chapter addressed the first two research subsidiary questions by examining the processes by which problems were identified and approaches to those problems developed, and identified a number of tensions in those processes. This chapter now addresses the third research sub question in considering factors that, over time, influence the choice of one approach from another in implementing strategic decisions. In the four regulatory agencies comprising this study, factors that impacted on decision-making processes were explored through a number of specific interview questions to top and middle managers, and through questionnaires distributed to operating managers. The middle managers interviewed are responsible for key operational strategic and tactical activities, including planning; operational decision making; resource allocation, monitoring and control, and considering and approving work programs. The operating manager respondents were included in this study because of their role in implementing strategic decisions, including implementing work programs and supervising or directing staff involved in those programs.

Challenges in managing strategic decisions

An interview question to top and middle managers regarding operational factors that impact on the implementation of strategic decisions was framed as “Are there any challenges in managing the strategic decision?” Responses were varied and ranged predominantly around competing priorities; engaging with stakeholders; access to resources and delays in decision making. Related to these identified challenges were a number of associated issues.

Delays in decision-making

One key challenge identified by a number of middle manager respondents in all four regulatory agencies is delays in decision-making by senior management. For regulator A, because strategic decisions are major work programs, more people from across the regulatory agency and other parts of the organisation are involved. The result of this

expansion of participants in regulator A decision-making processes means it takes longer for these decisions to be approved, as multiple input has to be sought and considered (RA2MM2). One solution offered to address these delays is to ensure decision-makers are given the authority to make decisions on the details of implementation, rather than constantly seeking further approval. As one respondent from regulator A explained, “giving [middle managers] the level of accountability and ability to make decisions that clear the blockages instead of having to go and wait to feed up to a [senior] decision maker” (RA2MM4).

Dissatisfaction expressed in regulator A regarding delays in decision-making was related to proposed changes being made once a strategic decision was under way. These changes aim to modify elements of strategic decisions that have been identified as not working out as originally projected. According to a middle manager, “once we’ve actually implemented something we think that it is not working so we need to change it...things need to be tweaked to ensure that what we're doing is going to be more effective for the industries” (RA2MM2). For this respondent in regulator A, the constant need to seek senior management approval for ‘tweaking’ details of previously endorsed decisions is a particular challenge. Such lack of flexibility in the decision-making process impacts the ability of the decision-maker to respond rapidly to changed circumstances.

A similar concern about delays in decision-making is shared by regulator B. As asserted by one middle manager, “The decision-making process at senior executive level needs to be more streamlined and quicker” (RB1MM1). An additional challenge for regulator B is the perennial expectation to show results of strategic decisions. Some respondents identified that providing evidence of the impact the strategic decision was having on the identified problem also contributes to delays in decision-making. This challenge was encapsulated by a middle manager from regulator B, who referred to uncertainty arising from whether there will be ongoing support by senior management in the absence of compelling data about the impact of strategic decisions. According to this middle manager, “Being able to determine your impact ...which we’re only just being able to do now 18 months after ... is a perennial challenge” (RB2MM2). Within all four regulatory agencies a challenge in implementing strategic decisions is the level of

involvement by senior management that inhibits getting on with that implementation once a decision is approved.

Respondents within regulator C and regulator D also identified that a challenge in implementing strategic decisions is the lack or weak support of the strategic decisions by senior management. This lack of support has implications for regulator D, particularly in maintaining the momentum of a program of work. As a middle manager declared, “The greatest challenge in managing [the strategic decision] would be to generate the ongoing longevity of this and the interest [by senior management]” (RD1MM2). Lack of strong management support is also reflected in regulator C responses, where despite senior management signing off on strategic decisions, there is bothersome interrogation on their part of the details of the implementation of the decision. Delaying or querying details of strategic decisions causes delays and also frustration. This challenge was represented in the comment from a middle manager respondent that “There isn't that senior management support for the sign off of the projects” which results in “lots of negotiation [having] to occur and justification, why are you taking that approach, which I would have thought would have been more of a given, given the high-level strategic approach” (RC1MM1). From the analysis of interview data evidence suggests that in all four regulatory agencies failures in top management support of delegated decision-making authority present specific challenges.

A key feature of NPM is the decentralisation of administration which gives managers more scope in decision-making. The lack of autonomy in the decision-making process within the four regulatory agencies is not only inconsistent with these NPM principles, but also reflects discordance with the regulatory agencies' own strategic decision-making arrangements. Despite the allocation of delegated authority as part of the approval process, such authority is not fully supported by senior management throughout the decision-making processes. In practice, the premise of a level of strategy implementation from the bottom up is compromised when those at the top do not adhere to processes that support such implementation. Those involved in decision-making require the support of management as a prerequisite for implementation (Miller, 2004). That commitment needs to be maintained by ensuring the strategic decision

remains a priority. For many of the respondents in all four regulatory agencies, challenges in the decision-making process include lack of management support. This lack of support is reflected in the absence of ongoing commitment to strategic decisions, as well as delays and interrupts to the process by revisiting or prolonging approvals.

Resources

The data analysis showed the allocation of financial resources to strategic decisions is an issue for respondents in all four of the regulatory agencies. Middle manager respondents pointed out that a particular challenge in implementing strategic decisions is the availability of resources to these major work programs, as most are not allocated additional funding or other resources. In regulator B this budgeting challenge is reflected in strategic decisions “being given a fairly small if not virtually non-existent budget” (RB2MM2). This resource concern is exacerbated by the public sector context, where budgetary decisions flow down to regulatory agency level. As one of the top managers described their situation: “There is effectively a recruitment freeze of the public sector, and what it has done is make it more difficult to recruit, particularly skills we might need” (RB1TM1). The viewpoint of regulator B that resourcing of strategic decisions is a challenge was shared by a middle manager from regulator A. This respondent acknowledged the challenges of undertaking major programs of work, which despite being new strategic initiatives, have to compete for core budget resources (RA1MM2).

Whilst there was some agreement by middle managers in both regulator A and regulator B that resources are a significant challenge in implementing strategic decisions, there was a pragmatic understanding by a middle manager in regulator B of the limitations of resource availability. This respondent acknowledged “like a lot of public services we have a lot of resourcing issues”. As this respondent asserted “the planning process [needs to] consider our actual ability to respond” (RB1MM3). There appears to be a conflict in regulator B of the comprehension from the planning process of strategic decisions as being important, and the subsequent allocation of the quantum of resources required to enact and implement those decisions.

From the data analysis, respondents in regulator B and regulator D suggested that consistency in forward planning would enable planning around available or allocated resources, so that the staged processes of work programs can be implemented over time. As identified by one middle manager in regulator B, what is required is “more of forward planning and maybe a slightly more staggered process for rolling things out [that would] would free up the inspectorate to best respond to their other responsibilities as well as developing quality [strategic decisions] and proactive work” (RB1MM3). This opinion was shared by a middle manager respondent from regulator D, who connected the success of strategic decisions with the availability of resources, suggesting “If you want more people to know about [compliance], you want more involvement out there and you want more growth out in that area, the only way to do it is with more resources” (RD2MM4). As this respondent succinctly put it, the remedy is to “provide the right resources, provide the appropriate training and actually try to secure the right people” (RD2MM4).

Concern around resources is also reflected in data from respondents in regulator A. In this instance, budgeting is tied to delays or changes in approval for strategic decisions. This creates additional challenges for managers implementing strategic decisions, as those responsible attempt to maintain commitment to the program of work. A middle manager reflected on this difficulty in maintaining the momentum of the project team, pointing out “because they feel like [senior management] made the decision and they are ready to move on and then after a few weeks later [it’s] no, that’s not going ahead we don’t have the money for that or things like that” (RA2MM1). Typically, in regulator A, regulator B and regulator D, lack of additional or sufficient funding for strategic decisions was identified by those responsible for implementing those decisions. A key challenge expressed by respondents in these three regulatory agencies is being able to effectively implement approved strategic decisions where that approval is not fully accompanied by the allocation of sufficient resources to deliver on the program of work. This dichotomy reflects a contradiction between the espoused importance by senior management of strategic decisions, and the practical implications of implementing those decisions.

For regulator C however, strategic decision resources are allocated to identified priority areas, a process that maintains the continuum of those work programs. A middle management respondent described the allocation of resources in the following way: “Now we've been given the license or the permission to focus on [priority areas], so we are trying to always direct our resources back to the priority. So if it's not a priority... we'll address it in some other non-labour-intensive way” (RC2MM2). However, focusing on priority areas creates a further challenge in being able to address all those areas, given the need to also prioritise resources. According to a top manager, “Looking at the way we are focusing on the data, we just don't have those staff to be able to do [priority areas] to a good level” (RC1TM1). Regulator C considers the strategic decisions as part of the planning process and allocates resources to those work programs as being priority programs. This importance of preventative activities reflects the recent shift by that agency from a reactive mode to a more preventative approach. As discussed in chapter four, regulator C has also integrated strategic decision development and implementation functions, thus breaking down previous barriers in the strategic decision-making processes.

Risk-based decision-making requires time to effectively implement strategic decisions. Time considerations in regulator A is a particular challenge given the need to engage with a range of both internal and external stakeholders. Engaging with those stakeholders and considering their input requires additional time (RA1MM2). Within regulator C time is also an issue for operating managers who are required to manage day-to-day response activities as well as implementing strategic decisions. This challenge was expressed by a middle manager thus: “[Operating managers] are very busy people. They have investigations. They have coroner's enquiries. They have inspector issues. They have union right of entry...so just finding the time to do [strategic decisions] is really hard” (RC2MM3). This tension, whilst observed as such by the regulator C respondent, does not however appear to be a barrier to participating in strategic decisions. When asked to identify the quantum of time in the previous week engaged in work directly related to the strategic decision, over two thirds of respondents in regulator C indicated they had spent “all of the time” or “most of the time” in the previous work week engaged in work directly related to the strategic decision (Figure

6.2 following). Despite the challenges of demands on resources, including time to undertake the range of regulatory activities, regulator C appears to go some way towards meeting that challenge.

Competing priorities

In addition to challenges in relation to the availability of resources, another challenge in regulator A, regulator B and regulator C is the need by these regulatory agencies to balance reactive work in responding to incidents and complaints with the preventative nature of strategic decisions. This pressure means there are often competing priorities, particularly where such decisions have been added to the existing work load without the allocation of additional resources. According to one regulator B middle manager “Everyone was extremely busy trying to juggle numerous tasks and responsibilities after the [strategic decisions] had been sort of settled on” (RB1MM1). This opinion was echoed by another middle manager from regulator B, who asserted that the exigencies of risk-based regulation means “competing priorities is probably the biggest challenge...because...reactive or responsive regulation is varied, so sometimes it's light and sometimes it's extremely busy” (RB1MM3). Decisions based on risk considerations that inform problem-solving approaches are often at odds with the practical application of dealing with problems that surface through incidents and complaints that require immediate attention, and in many cases, action.

Demands on operational time taken away from reactive work to undertake scheduled activities such as strategic decisions are particularly challenging when staff involved in those decisions are not under the direct management of operating managers responsible for the implementation of strategic decisions. A middle manager respondent from regulator A expressed this challenge thus: “the biggest challenge is accessing [people] that aren't under my own line of management...[as]...we don't necessarily have any authority to compel people to participate” (RA1MM2). A middle manager respondent from regulator C also asserted a challenge is engaging personnel for whom managers are not directly responsible. This, the manager argued, is because “the regulatory pendulum has swung, and how do you bring people along with that when you're not their direct manager” (RC2MM3). This perspective reflects changes made by regulator

C, discussed in chapter 4 and in this chapter, which reflect a ‘new approach’ that places greater emphasis than previously on collaboration rather than coercion. Not only is there a challenge in accessing staff, but there are challenges in aligning those staff to differing priorities and perspectives.

For regulator A, competing priorities are less about limited resources and more about monitoring the distribution of strategic decision responsibilities across various work teams, so there is not a disproportionate work load. As one middle management respondent from regulator A noted, such considerations are “really about sharing the load as well from our operational perspective, we don't want one team being heavily dominated” (RA1MM2). This necessity to balance competing priorities does however require a level of delegated authority to make decisions at a local level (RA1TM2). However, because of the agency’s centralised decision-making, operational areas no longer can make decisions about operational matters involving local prioritisation. This concern was expressed by a top manager thus: “The operational areas don't have the level of projects they used to have, they're all centralised, that's creating some issues because they're frustrated with not getting on with things” (RA1TM1). Despite the acknowledgement of the need for operational level decision-makers to have flexibility in dealing with emergent issues, centralisation of decision-making has limited the exercise of that discretion.

In these instances, centralisation of decision-making reflects a tension between the stated strategic objectives of the organisation to focus on preventative initiatives, and operational exigencies at a local level which require the regulator to deploy resources to respond to immediate work health and safety concerns. The implementation of strategic decisions, according to one of the top managers, “requires a commitment of an extensive amount of resources...particularly inspector resources” (RA1TM2). In recognition of these challenges in addressing competing priorities, regulator A has embarked on a prioritisation of preventative activities as a key strategy for the agency. As a top manager explained, the aim is to “gradually transfer resources away from our response work which is absorbing too much of our time at the moment, to our prevention which essentially is the [strategic decision work program]” (RA1TM2).

The analysis of the data suggests that competing priorities is a challenge for three of the four regulatory agencies. These competing priorities emerge as tensions caused by the need to maintain traditional response functions whilst aspiring to change the operational focus to risk-based preventative activities. These tensions are exacerbated by the ambiguous arrangements around responsibility for deploying staff to enable flexibility in implementing strategic decisions. Using problem-solving methods in strategic decision-making requires a revision of traditional performance indicators, with a move from business indicators such as outputs, service levels, quantity and timeliness, to outcome indicators that includes results, causality and accounts of mitigation or reduction of harm (Sparrow, 2000). An associated challenge that emerged from the data analysis is the expectation of senior management for timely results, such as those that are available for response activities, compared to the longer lead time for the results of strategic decisions based on preventative actions.

Engaging with stakeholders

As discussed in the previous chapter, all four regulatory agencies mirror NPG principles of engaging with stakeholders as a key aspect of their decision-making processes. Such engagement provides information that informs the selection of problems as well as validates data that defines those problems. Given the literature suggests that such engagement can create challenges and tensions, it is somewhat surprising then that only two of the four regulatory agencies identified engaging with stakeholders as a challenge in implementing strategic decisions.

The strengthened focus by regulator B on preventative work tailored to the specifics of the industry or sector generates the expectation those involved in implementation of strategic decisions possess the relevant skills and knowledge to engage with stakeholders at that level. As one top manager stressed when reflecting on the history of the organisation in delivering on preventative programs, “We have learned that we ... need heavy involvement from the regions or the industries or the people in their own organisation who have had experience with that” (RB1TM1). Requiring industry knowledge and/or experience as a determinant of credibly engaging with stakeholders was a consideration also shared by regulator A.

According to a regulator A middle manager, “without having this subject knowledge...you are very soon exposed...you go from being one of them and having the level of buy in from [them] to being just another public servant turning up telling them what to do” (RA2MM4). Without subject knowledge, credibility for those responsible for implementing a strategic decision can be quickly eroded. Industry knowledge as a credibility factor is not sufficient in itself though, as it is also necessary to be able to communicate effectively with stakeholders. Desirable skills and competencies certainly include communication, but negotiation and facilitation skills are also desirable in order to build relationships with stakeholders over time. This requirement for such stakeholder engagement skills is critical in engaging with stakeholders and soliciting input from them (RA1MM2).

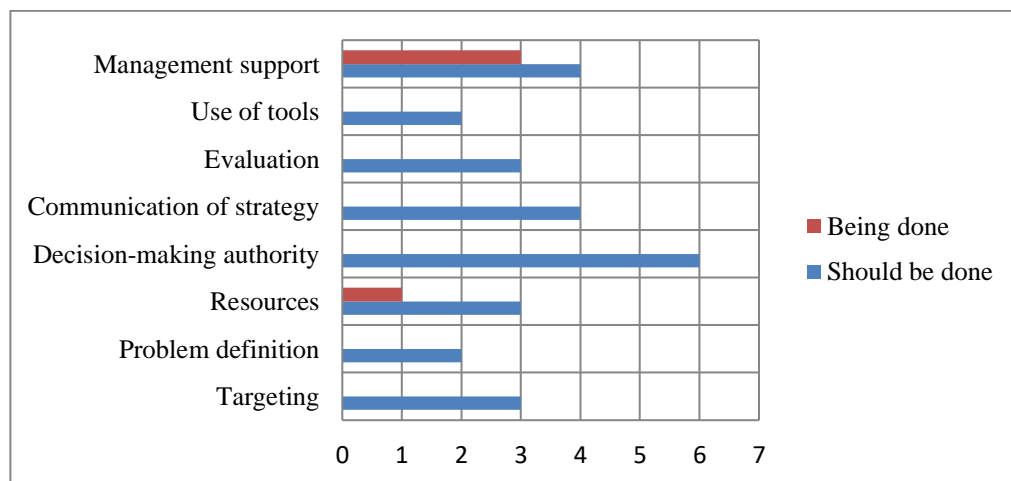
Another regulator A middle manager also suggested that basic analytical skills was a factor in engaging with stakeholders. These analytical skills are aligned to being able to conceptualise problems and solutions, reflecting a focus in that regulatory agency on collaboration with stakeholders. As put forward by the middle manager, “They don't need to have a huge amount of analysis, but it's more about conceptual does-it-make-sense type of thing” (RA1MM3). For regulator A and regulator B, credibly engaging with stakeholders is seen as a matter of ensuring requisite skills and knowledge.

In addition to the recognition of specific skills required to credibly engage with stakeholders, regulator B also pointed to being able to maintain the momentum of programs of work developed with the involvement of stakeholders. Such involvement requires the allocation of stakeholder resources, but there are competing demands on those stakeholder resources as time goes on. As attested by a middle manager from regulator B a particular challenge in implementing strategic decisions is “getting [stakeholders] to maintain a sense of momentum, because, [the stakeholder's] engagement in a particular campaign is not the sole call on their resources all the time” (RB2MM3). Engaging with stakeholders was identified in the previous chapter as an aspect of decision-making for all four regulatory agencies. However, when asked to identify challenges, responses from middle managers in regulator A and regulator B point to internal matters such as the availability of requisite skills as challenges in engaging with stakeholders, rather than the mechanisms of that engagement.

Implementation success factors

As well as looking at specific challenges, attributes that support implementation of strategic decisions were also investigated in the interviews with middle managers. Twenty-eight middle manager respondents in the four regulatory agencies were interviewed across phases one and two of the research. Middle manager respondents were asked “What is the single most important thing that could be done in the organisation to support the implementation of the strategic decision? Or, if it is being done, what is it?” One respondent from regulator D asked for their response not be documented. These individual regulatory agency responses about factors that support decision-making are collated and presented in figure 6.1 below. It should be noted that despite being asked to nominate one factor, some respondents provided multiple, or associated deliberations, and these are included as separate factors.

Figure 6.1: Important decision-making factors



From the data presented in figure 6.1 above, the majority of responses are related to identification of what ‘should be done’ in the organisation, showing that a number of implementation success factors are not in place. Whilst the intention of this interview question was to collect data on alternative factors to the interview question on challenges, as seen from responses in figure 6.1 above, this question elicited perspectives that also present as particular difficulties in the decision-making processes.

Reflecting a corollary between perception and action, some responses identify senior management support for the implementation process as a vital factor in implementing strategic decisions, not only setting strategic direction but also supporting the implementation processes. Interestingly, this factor was represented as both a desirable factor and as one in place. Management support is identified by regulator B and regulator D as an existing success factor in implementing strategic decisions. Those implementing strategic decisions require management support in deflecting both operational and political pressures in order for decision-makers to progress designated work programs (Pires, 2011). This support also extends to ensuring those implementing strategic decisions have the authority to progress, and if needed, modify agreed arrangements without seeking further approval. One regulator B respondent in pointing out that management support was in place, framed this response around management not only being clear in articulating strategic direction, but decision-makers also having “the absolute backing and full support” of senior management.

Whilst clarity of strategic direction, and support by senior management when strategic decisions are implemented are important success factors, the effective implementation of strategic decisions is more dependent on freeing up decision-making processes. This freeing up is the predominant desirable factor, with responses from all four regulatory agencies reflecting this attribute. These considerations ranged from “clear and strong decision-making” (regulator A); “someone who has the authority to make those decisions” (regulator A); “needs to be more streamlined and quicker” (regulator B); “everyone needs to know who’s involved with those [decision-making] processes (regulator C). One characteristic of NPM is devolution of authority, including giving managers more autonomy in decision-making. This aspect was seen by many respondents as a particular factor that would enable decision-making, but as seen in the previous section, lack of such autonomy creates challenges in implementation.

A number of responses identified communication of regulatory strategy and objectives as another desirable success factor. Poor or inadequate communication among those responsible for implementing decisions is one factor contributing to failures in strategy implementation (Hrebiniak, 2006). Communication of strategy is seen by some respondents as important in being able clearly translate the strategic direction of the

organisation, and ultimately provide commitment and consistency in operational activities. This expressed need for consistency is a component many respondents stressed as important in forward planning, which also enables planning around resources. Whilst there is a pragmatic understanding by some respondents of the limitations of resources, adequate resourcing of strategic decisions is nevertheless identified as a critical success factor. In contrast to these responses, according to one respondent from regulator D resources, including time, are already made available to undertake strategic decisions.

As discussed in the previous chapter, the development of strategic decisions in the four regulatory agencies are aligned to problem definition, which require a problem to be precisely identified before approaches are developed to address that identified problem. A number of responses identify precise problem definition as a critical success factor in implementing strategic decisions. One response encapsulating this desirable factor was put thus: “actually defining the problem. Being really clear about what’s hidden outside the scope so we know what we can change and what we can’t change, and then putting in place really good evidence-based solutions that actually address those problems” (regulator B). Defining the problem precisely before developing approaches to that problem is an important aspect of strategic decision-making (Sparrow, 2000). Applying such problem-solving methods requires alignment of tools to the problem, and appropriate application of tools was identified by some respondents as another required success factor. As shown also in chapter five, respondents in all four regulatory agencies pointed to the importance of choosing appropriate tools, and suggested a strong focus in their respective regulatory agency on selecting tools through targeting problems and tailoring solutions.

Tied to the effective alignment of tools is a need to understand the impact of interventions developed under programs of work. Being able to evaluate and discern the degree of success of strategic decisions in addressing problems is a key success factor in the implementation of strategic decisions (Sparrow, 2000). As reflected in respondents’ consideration of success factors, good data and intelligence are important factors in designing programs of work, but also in evaluating the outcomes of those interventions. Having considered the responses from individual managers in relation to

factors that support the implementation of strategic decisions, the following section considers implementation success factors from an agency level perspective.

Regulator A

The responses of the eight middle manager respondents in regulator A reflect the progress of strategic decision-making. In phase one of the research, strategic decisions were primarily under development or in the early stages of implementation. In this phase commitment and support, including budget support, are seen by middle managers as desirable elements. Allocation of a defined and discrete budget is also seen as critical. By phase two, responses show that clarity and consistency in decision-making are understood to be necessary aspects in the ability of middle managers to implement strategic decisions. These prerequisites are defined as clarity about the project scope and requirements, quick and consistent decision-making, and decision-making authority once a program of work has been approved. Another desirable aspect of decision-making processes is removing the focus on results as ‘busyness’ indicators.

Regulator B

There were six middle manager respondents in regulator B. Responses at phase one of the study also reflect the maturity in that agency of the strategic decisions, which were primarily in early stages of development. Improvements in the use of evidence in accurately defining problems is one identified desirable success factor. Another desirable aspect is to be able to ensure that resources are available for allocating to strategic decisions. By phase two of the study, respondent perspectives reflect frustrations at other aspects of decision-making processes, with an assertion that a more streamlined process is a desirable feature. In contrast to this view, another view was this success factor *is* in place, with the observation that senior management provide clarity of strategic direction as well as support for the strategic decision through understanding and accommodating the political environment. Another desirable factor is the requirement to have good data, not only to identify problems but also to assess the success of strategic decisions in achieving expressed outcomes.

Regulator C

Six middle managers in regulator C expressed diverse desirable success factors. In phase one clear communication regarding decision-making processes, including clarity of roles, was seen as a critical success factor. Another required factor was senior management commitment to the strategic decision, a commitment that incorporates trust in middle management to implement the decision once approved. By phase two, when regulator C had implemented a stronger strategic focus on preventative work which was predicated on engagement with those being regulated, the identification of success factors generally reflect support for this approach. There was concurrence with the approach but also a consideration that taking a more multifaceted approach assists in successfully implementing strategic decisions, thus reflecting a further consideration that sharpening of focus is needed. Whilst more strategic use of available tools was identified as a potential success factor in regulator C, it is interesting to note from the previous chapter, in survey responses by operating managers to the effective use of tools in strategic decisions, there was unanimous agreement that this factor is in place.

Regulator D

Whilst one of the eight middle managers in regulator D did not wish for the response to be included, a number of respondents suggested success factors, particularly support by senior management, are in place, and evident across the whole agency. One desirable success factor is the need to improve data analysis skills, a factor that was incorporated in changes to the organisation that took place between phases one and two of the study. Further success factors were resources, including time, and communication. Reflecting priority given to the program of work by senior management, time to be involved in the strategic decision is seen as both a desirable success factor and an element already in place. Another desirable success factor is communication, specifically in ensuring shared knowledge of the rationale for strategic decisions. Involvement of appropriately skilled and trained staff in the implementation of strategic decisions was identified as another necessary success factor.

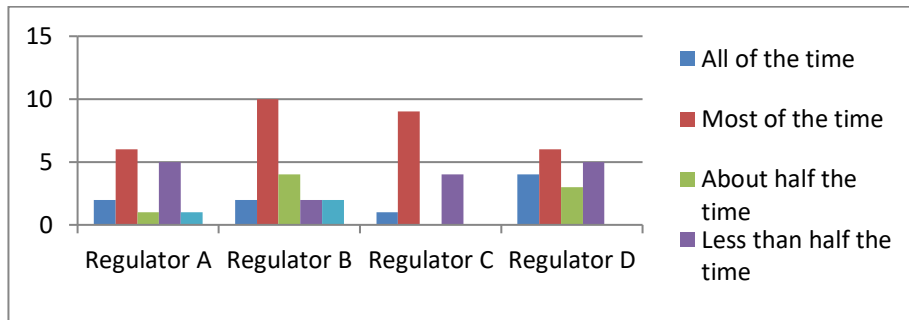
In looking at the data on important decision-making factors from each individual regulatory agency it is evident that there are some common themes, and some differences. One distinct difference is the importance of management support factors identified in phase one and phase two of the study. Some of these differences reflect the maturation of strategic decisions from development in phase one to implementation in phase two, and associated issues based on that progression from development to delivery. Lack of senior management support for decision-making authority and delays by those senior managers in making decisions are factors in common for all four regulators, but to varying extents. Regulator A had seen a number of changes between phase one and phase two, including a change in CEO. Regulator C had undergone a major shift between phase one and phase two from a reactive approach to a greater focus on preventative strategies. This transformation is reflected in more positive accounts of management support by regulator C, compared to regulator A. A similar distinction as to the level of management support is made by some respondents in regulator B, however there were some diverse reflections across that agency that suggest that these differences may be context specific, based on individual perceptions, rather than organisational approaches. This is not the case within regulator D however, where responses provide a perspective that within this agency there is effective management support, and that this also results in timely decision-making.

Views of operating managers

Analysis of data in previous sections of this chapter relate to challenges identified by middle managers in managing competing priorities between reactive and preventative work programs. As seen from the analysis of data in chapter five relating to the roles of middle and operating managers, operating managers in this study have significant roles in developing and implementing strategic decisions. In order to identify the level of operating manager involvement in implementing strategic decisions, a five-point Lickert scale of “all of the time”, “most of the time”, “about half the time”, “less than half the time”, “practically never” was used in a questionnaire distributed to those staff identified by the regulator as participating in implementing defined strategic decisions. The survey participants were asked to indicate the amount of work time in the last five

working days directly related to implementing strategic decisions. Figure 6.2 below sets out the results.

Figure 6.2: Time spent on strategic decisions



As demonstrated above, three of the regulators indicated a high rate of involvement, with over two thirds in regulator C (n. 10/14) and over half in the other three regulators indicating they had spent “all of the time” or “most of the time” in the previous work week engaged in work that was directly related to the strategic decision. Despite 56% (n. 10/18) in regulator D responding they had spent “all of the time” or “most of the time”, this regulator had the greatest variation in overall involvement, with 44% (n. 8/18) respondents indicating “less than half” or “practically never”.

The analysis of data shows when strategic decisions are being implemented as discrete programs of work, substantial time is dedicated by personnel in the four regulatory agencies to those discrete programs. The data analysis of responses from operating managers suggest not only do the regulatory agencies allocate resources from reactive to preventative approaches, they also create slack to free up time from routinised aspects of the job for other more consequential practices (Coslovsky, 2011). This level of expressed involvedness, particularly given the challenges of conflicting priorities expressed by middle managers discussed above, suggest diverse accounts between middle managers and operating managers involved in strategic decision-making.

In order to provide additional perspectives to those of top and middle managers on factors of importance in the strategic decision-making process, operating managers involved in implementing strategic decisions were asked “Please rank any of the factors listed below in order of importance to you that you identify as important in the

implementation of the strategic decisions”. These responses are presented in table 6.1 below and then discussed.

Table 6.1: Factors of importance in implementing strategic decisions

Statement	Regulator A Ranking	Regulator B Ranking	Regulator C Ranking	Regulator D Ranking
It is relevant to the rest of the organisation	6	4	2*	5
Other priorities accommodate the strategic decision	5	6	4	6
Other events do not divert attention from the strategic decision	8	5	6	8
Communication of the strategic decision is adequate	3	3	2*	3
The roles and responsibilities of people working on the strategic decision are clear	2	2	3	2
Management is fully committed to the implementation of the strategic decision	1	1	1	1
The strategic decision is monitored	7	7	5	4
The strategic decision is evaluated	9	9	7*	7
Problems in implementation are dealt with by managers	4	8	7*	9
Other	10	10	8	10

From the data presented in the table 6.1 above, of a total of 63 respondents for this question across the four surveyed regulatory agencies, the highest rating at number 1 for importance in all four regulatory agencies was “management are fully committed to the strategic decision”. These responses from operating managers correspond to challenges raised by middle managers in all four regulatory agencies that senior management at times appear to be not fully supportive of the strategic decision, with delays in approvals or revising details of previously approved strategic decisions.

Clarity of role was of next importance at number 2 for regulator A, regulator B and regulator D, and number 3 for regulator C. This rating, compared with the elaboration of the roles of operating managers in chapter 5, suggests that whilst operating managers have delegated authority for many operational aspects such as reactive work, their role in the implementation of strategic decisions is less clear. The data analysis suggests that the roles of operating managers and middle managers in the strategic decision-making

process are not clearly distinguished. From the data presented in table 6.1 above, operating managers are not comfortable with this ambiguity.

Communication of the strategic decision was identified by respondents in all four regulatory agencies as also of high importance. Regulator A, regulator B and regulator D rated this factor at number 3. Regulator C respondents equally rated relevancy and communication at number 2, reflecting the perspective that relevancy of decision making for the observer is based the transfer of knowledge as communicated within the organisation. The responses from operating managers in regulator C and regulator D echo middle managers responses in those regulatory agencies when asked about important decision-making factors. Communication of strategy was seen as important in translating the strategic direction of the organisation by those middle manager respondents.

Aspects of accommodating both proactive and reactive activities are incorporated in statements about priorities accommodating the strategic decision. For all four regulators, these implementation considerations are rated as of greater consequence (rated at 5, 6, 4 and 6 respectively by regulator A, regulator B, regulator C and regulator D) than administrative considerations such as evaluation and, with the exception of regulator A, problems in implementation being dealt with by managers. In these aspects, the rating by operating managers of the importance of other priorities in not impacting on strategic decisions reflects challenges identified in previous sections of this chapter by middle managers in all four regulatory agencies in managing those competing priorities.

For respondents in regulator B, regulator C and regulator D, management dealing with implementation problems is not as important as other concerns, whereas respondents in regulator A rank this a quite important, at number 4. A possible explanation for this result might be that regulator A had recently centralised decision-making, with top and middle manager respondents specifically identifying that this centralisation limits operating manager's discretion to deal with matters they had previously had authority to manage at the local level. Monitoring was a relatively important factor for respondents

in both regulator C (number 5) and for regulator D (number 4), whilst respondents in regulator A and regulator B rated this factor relatively low (number 7).

Surprisingly, given the focus on evidence in their strategic decision-making processes, evaluation of strategic decisions is not rated highly by any of the respondents. The responses from regulator A and regulator B rank this factor at 9, reflecting a similar low rating from respondents from regulator C (ranked at number 7 but out of 8 given the duplicated ranking from this regulator). These ratings reflect to some extent the findings in chapter four that show middle managers tend to focus on data primarily a means of providing context specific evidence to support decisions, and less on using data for evaluation.

A persisting concern across all the questionnaire respondents is the importance of management being fully committed to strategic decisions. This concern also reflects the stances of many middle management interview respondents, who express the view that from their perspective it is desirable to have ongoing and unwavering support of the strategic decision as a priority by their senior management. Responses from operating manager respondents in the question relating to enabling factors, described in table 6.1 above, and the similar responses of middle managers, described in figure 6.2, both reflect concerns about not being able to effectively implement strategic decisions due to the next management level either delaying approval or querying decisions already approved. One of the most important reasons for success in implementing strategic decisions is strong support, including from management (Miller, 1997). The identification by middle managers of senior management support as a make or break factor in implementing strategic decisions is also reflected by questionnaire responses from operating managers, thus providing a degree of consistency in these findings across these two levels of management.

Conclusion

This chapter identifies decision-making factors that over time influence the choice of one approach from the other in the range of regulatory discretion options available. As identified, approaches to the implementation of strategic decisions depends on

management practices and roles that facilitate decision-making processes. Reflecting NPM principles, in the four regulatory agencies there is an increased role of middle managers in the strategic decision-making process. As seen in chapter 4, this increased role has seen changes in those organisations that support details of strategic decisions to be developed at lower levels of the organisation. Notwithstanding these changes, once strategic decisions are approved by senior management, there are ongoing interruptions to middle and operating managers implementation because of delays and reconsideration by senior management of the detail of those decisions. This second guessing is despite the ostensible authority vested in those managers to take carriage of the fundamentals of the strategic decisions.

These challenges identified by respondents that include issues regarding delays in approval or lack of support by senior management create tensions between the execution of strategy as top down or bottom up. Interruptions to the decision-making process suggests lack of correspondence with the stated role by middle managers of implementing strategic decisions and realities of the lack of autonomy of those middle managers. A consequence of these delays and interruptions in implementing strategic decisions may create gaps in action that allow resources to be idle or redeployed. With the regulatory agencies' greater focus on preventative work, and the use of evidence to inform the identification of problems, such gaps are not able to be filled by programs of work outside of those approved through the strategic decision-making process. These competing priorities within those regulatory agencies between reactive and preventative programs of work reflect tensions in applying a risk-based approach built on problem-solving methods. Despite one of these tensions being the availability of resources, responses from operating managers suggest that strategic decisions are seen as important, given the amount of time allocated by them to those programs of work.

Involvement of stakeholders in identifying problems and developing solutions as part of the strategic decision-making process requires a substantial commitment from those stakeholders, including time and other resources. Delays to the implementation of strategic decisions because of regulator inaction reflects on the credibility of the regulatory agency, and in some instances, may see stakeholders withdraw from the process due to competing demands on their resources.

However, one interesting aspect identified from the data regarding challenges in implementing strategic decisions is the comparative absence of issues regarding engagement with stakeholders. As shown in chapter 4 and chapter 5, this engagement can be problematic as tensions arise from addressing collective rather than individual needs. However, such considerations did not appear to be an issue for middle managers when asked a direct question regarding factors influencing the implementation of strategic decisions. These responses suggest such stakeholder engagement considerations are of less importance in implementing strategic decisions than in developing them, or that internal issues of management support are of greater consequence to those respondents.

From the findings detailed in this chapter, in chapter 5 of the practices of identifying problems for attention and selecting and applying approaches to those problems, and those presented in chapter 4 that showed the processes and outcomes of developing and implementing harmonised policy, the foundation has been set for the discussion in the following chapter of the implications of these findings.

CHAPTER 7: DISCUSSION AND CONCLUSIONS

Introduction

The review of literature in chapter 2 reveals many regulators have adopted a responsive regulatory framework based on identifying risks and managing harm. This literature also demonstrates that the interface of public sector principles such as NPM and NPG with risk-based approaches has particular implications in the regulatory space. Insights from the literature suggest this coalescence has generated a set of conditions for regulatory strategic decision-making that creates a number of additional complexities.

These conditions raise issues around aspects of stakeholder engagement; transparency and accountability; risk and responsiveness; problem-solving methods and the exercise of discretion. Through the exercise of discretion, decisions need to be made, however little has been known about the decision-making processes of risk-based regulators in interpreting policy and translating it into regulatory strategies. Whilst some studies have considered regulatory decision-making, much of the research is on actions of frontline or street level public servants (e.g. May & Wood, 2003) or consequences of interventions with regulated entities (e.g. Gunningham, 1987; Parker, 2006).

This study of strategic decision-making differs from the bulk of such studies in that it reveals the ‘black box’ of strategic decision-making in risk-based regulatory agencies. This thesis investigates what is seen when the ‘black box’ of translating harmonised risk-based policy into strategies and actions is opened for closer examination. The examination uncovers the role of decision-makers in not only translating policy into strategy through their decision-making processes, but in effect recreating strategy as tensions appear throughout those processes due to various internal and external factors.

The analysis of decision-making processes of the four Australian work health and safety regulatory agencies addresses some gaps in the knowledge of decision-making within regulatory agencies. It is reiterated here that this knowledge gap is problematic for a number of reasons. Firstly, the interface of NPM principles of devolving authority with NPG concepts of engaging with stakeholders places decision-makers in regulatory agencies in a unique position of influencing and being influenced by agency, polity and

policy. This position brings a number of tensions which had not been sufficiently dealt with in the literature to date. Secondly, risk-based regulation is predicated on decisions about increasing and more complex problems regulators are expected to address, but with decreasing resources, thus requiring the prioritisation of risks. Thirdly, in an environment of harmonised legislative arrangements, there is an expectation of consistency. This expectation of uniformity in decision-making, when associated with the prioritisation of risks and responsiveness to regulated entities in administering risk-based legislation, creates challenges and tensions for decision-makers in risk-based regulatory agencies.

Discussion of findings

In presenting the original contribution to knowledge made by this research, this chapter discusses and draws conclusions regarding the research findings from Chapters 4, 5 and 6. It also speaks to the findings from the review of literature in chapter 2 to highlight implications of these findings. In this regard, the following section firstly addresses the three subsidiary questions, being:

1. In a risk-based regulatory environment, how do decision-makers identify problems for attention?
2. How do decision-makers in risk-based regulatory agencies select and apply approaches to address these problems?
3. Over time, what factors influence the choice of one option from another in the range of regulatory discretion options available?

A discussion then follows of the main research question posited from this review, “In a risk-based regulatory environment, what are the strategic processes by which decision-makers interpret harmonised policy and translate it into strategies and actions?” The chapter then presents the key contributions of this study to theory and to practice, and concludes with limitations of the study and suggested areas for future research.

Research question 1: In a risk-based regulatory environment, how do decision-makers identify problems for attention?

As identified in chapter 4, problems are identified by the four regulatory agencies through their strategic planning processes, which are grounded in risk-based principles. These risk-based principles are reflected in the pivotal compliance and enforcement decision-making policy endorsed by all Australian regulatory agencies. Despite this policy harmonisation, the *National Compliance and Enforcement Policy* is disparately recognised more as an operational tactical policy and not primarily as an overarching strategic decision-making framework by most of the regulators. These differences in interpretation both between and within regulatory agencies reflects some fragmentation of harmonised approaches at this level of decision-making.

Notwithstanding these differences, all four regulatory agencies apply risk-based considerations in identifying problems for consideration. These considerations encompass jurisdictional-wide risks as ascertained from available data, as well as political and business risks determined from a range of environmental scanning mechanisms to identify agency specific risks. Problem identification processes include regulatory agencies engaging stakeholders in identifying risks and subsequently nominating problems. As determined from the findings in chapter 4, the four regulators mitigate political risks by the inclusion of external stakeholders in strategic planning processes and/or to assist in the identification of risks.

As comprehensively detailed in chapter 5, in developing risk-based preventative strategies the four regulatory agencies use evidence to identify problems for attention. The concept of risk-based evidence to identify problems is a compelling one, in some respects as a means of distancing such decision-making from political influences. Nonetheless, the gathering of evidence is not an ordered process, due to the dynamic nature of the risk environment (Baba & Hakem Zadeh, 2012; Head, 2008). Given the complexity of locating and confirming risks, including challenges in identifying causation, it is difficult to link an evidence-based approach to such problems (Nutley & Webb, 2000). Nonetheless, all four regulators attempt to be transparent, and provide a

firm evidence base for identifying problems for attention, with evidence drawn from a range of sources.

These sources include customary organisational data relating to worker's compensation costs or incident rates and types of injuries. Nevertheless, relying solely on evidence such as incidents and complaints data can be inadequate, as approaches based on such evidence may not be effective in the longer term in deterring or preventing future harm (Sparrow, 2000). Consequently, the regulators do not confine their search for evidence to this data, and undertake wider interrogation of sources beyond the agency to identify important regulatory problems. This wider swathe gathers evidence through methods such as market analysis, environmental scanning and media analysis.

Whilst taking a broad approach to gathering evidence incorporates diverse sources, some of the regulatory agencies also determine a finer level of granularity to problem identification by seeking context specific evidence. This evidence is derived from sources such as local organisations or devolved industry sectors. Such evidence provides for more nuanced problem identification. Including more perspectives in determining problems also expands the choices of options available to the regulator in addressing those problems. However, this pluralistic approach to identifying problems for attention creates tensions for the four regulatory agencies which are bound by a public sector customer focus in engagements with regulated entities.

Concepts of customers and clients are aligned to NPM, but such concepts are at odds with the relationship that regulators have with their often unwilling customers. As shown in chapter 4, such service-centric proscriptions emanate from the public sector organisation to which each of the regulators in this study belongs, and indeed from the government level of each jurisdiction. One theme discussed in chapter 4 was around a 'new' or enhanced approach of engagement with regulated entities by the four regulators, based on client or customer considerations. The premise for such considerations is to be more responsive to the needs of regulated entities. However, the adoption of client service centric principles by the regulatory agencies in dealing with regulated entities extends the client relationship beyond the traditional model of customer service.

The interaction of regulatory agencies with their customers presupposes an element of coercive power in the transaction, whereby the regulated entity may feel compelled to participate in those exchanges. The unique nature of regulatory agencies therefore does not make for easy rendering of public sector client or customer focused modes of engagement in their decision-making processes. Therefore, the terminology of client or customer service, and indeed the approach, cannot be easily redefined. One definition from the literature that is less problematic for the regulators is that of stakeholders, and the process of engaging with stakeholders in order to better understand and respond to their concerns (Alford & Speed, 2012, Moore, 1995). Regulatory agencies being more responsive to individual needs of stakeholders can be reframed under NPG principles as interactions to elicit those entities to voluntarily engage in compliance actions, rather than being coerced (Alford & Speed, 2012).

Instead of the threat of punitive action, this engagement appeals to intrinsic motivators such as social responsibility for those stakeholders who exhibit behaviours of being willing and able to cooperate. The NPG paradigm of collaboration emphasises enabling rather than coercing, in effect shifting the relationship between the regulator and the regulated entity from compulsion to one of choice (Salamon, 2002). The literature reveals drawing on stakeholder input throughout the decision-making process encourages active participation by those involved, to enable the tailoring of approaches based on the compliance postures of the regulated entities (Alford & Speed, 2006; Baldwin & Black, 2008; Bartel & Barclay, 2011). The engagement by the four regulatory agencies with their stakeholders, discussed in chapters 4, 5 and 6, presents as more aligned to NPG principles of collaboration.

The new or enhanced focus on stakeholder engagement by the four regulators thus reflects a shift from NPM concerns of a customer or client focus on service delivery, to NPG tenets of participation and collaboration with stakeholders. Collaboration involves contact with stakeholders throughout the decision-making processes, including eliciting information that informs the identification of problems. According to respondents from the four regulatory agencies, this collaboration enhances the evidence base for decision-making. The analysis of data in chapter 5 suggests though that such collaboration creates tensions between the use of empirical data derived from established sources and

information derived from stakeholders. Despite benefits of expanding the evidence base and obtaining endorsement of problems, such collaboration suggests stakeholders can bring their own subjectivities to the decision-making process and in doing so expose those processes to persuasion and coercion. In practice inclusion of stakeholder concerns has the potential to dilute the focus of the regulators risk-based approach, as stakeholder responses that may not be consistent with the evidence are accommodated when identifying problems for attention.

The decision-makers in this study identify problems for attention through application of risk-based approaches that utilise problem-solving methods. A risk-based approach based on problem-solving methods expands the range of discretionary options, and by including the regulated entities in cooperative compliance actions, the regulator can move from a rigid enforcer of rules to a facilitator of innovative approaches. The adoption of a risk-based approach is based on long established presumptions that such an approach provides a rational basis for allocating regulator attention to areas of risk.

Research question 2: How do decision-makers in risk-based regulatory agencies select and apply approaches to address these problems?

Proponents of problem-solving suggest resources can be targeted to addressing areas of highest risk, and that approaches to identified problems are framed around a toolkit which comprises more than the standard range of tools, to enable tailored, targeted approaches to addressing problems (Black, 2002, 2005; Sparrow, 2000). Problem-solving is based on the nature of the risk and thus problem-solving requires an “operational risk control model” (Sparrow, 2000, p.244) that accommodates a number of forms of discretion beyond enforcement decisions about which violations the regulatory agency should deal with. These discretionary options are “the right to set the mission, the right to choose what to work on, and the right to choose how to work on it” (Sparrow, 2000, p.244). This is an ambitious discretionary scope.

An increasingly pluralistic regulatory landscape means that the decision-makers in this study have to accommodate additional input as they choose not only what problems to address, but also consider approaches to those problems. In selecting and applying approaches to address problems, decision-makers in all four regulatory agencies look

beyond their organisational boundaries for opportunities to engage with stakeholders who have important knowledge and expertise. A particular aspect of NPG is the inclusion of stakeholders in decision-making processes, in order to pool resources and ideas that enable the development of solutions that are acceptable to the participants in the decision-making process. As such, NPG places focus on inter-organisational relationships (Torfing and Triantafyllou, 2013).

Whilst each of the regulatory agencies has well established mechanisms to engage with stakeholders when developing strategic decisions, these engagements require shared expectations by both the regulators and stakeholders about strategic decision actions and outcomes. Reflecting the consideration of shared expectations, respondents suggest their stakeholder engagement mechanisms are based not simply on communication (such as this is what the problem is, these are the approaches to address that problem), but on ensuring there is common understanding of, and agreement with, these expectations. Engaging in cooperative conversations with those being regulated encourages and facilitates compliance, and points to improved performance outcomes. (Nicholson-Crotty & O'Toole, 2004). However, these interactions with stakeholders convey a complex set of messages about the potential for escalation of actions, whilst maintaining a focus on voluntary rather than coerced compliance.

Such exchanges require specific communication and interpersonal skills in order to convey complex messages. These skills comprise both technical skills, such as the traditional inspector response actions of compliance and enforcement instrument choice, and behavioural skills such as reflected in analytical and communication skills (O'Toole, 2010). However, these behavioural skills are not always part of formal skills development processes of the four regulatory agencies. A number of respondents in this study suggest a challenge for staff involved in deploying strategic decisions is having the requisite communication skills in engaging with stakeholders to elicit input and develop an understanding of their needs when selecting and applying approaches to address problems. These skills limitations may inhibit communication with stakeholders and hence exploration of a range of options beyond those understood as traditional compliance and enforcement approaches.

Whilst engaging with their stakeholders better places decision-makers in the four regulatory agencies to select and apply approaches to address identified problems, such engagement also dictates a need for transparency and accountability in those processes to avoid perceptions of regulatory capture. The potential for regulatory capture is greater in regimes such as risk-based regulation where there is a high degree of discretion in the administration of that regulation (Grabosky & Braithwaite, 1986). Whilst regulatory capture in engaging more closely with the regulated community is a potential risk to the regulatory agency, the benefits and indeed expectations of such engagement outweigh this potential risk, particularly when there is accountability and a relationship based on trust (Murphy, 2004).

One way in which the regulatory agencies address these accountability and trust requirements is through the use of evidence to provide transparency of the decision-making processes. Transparency is reflected through responding to stakeholder input in identifying problems and selecting approaches to address those problems. Tensions emerge though between transparency and such stakeholder engagement. In order to be transparent, regulatory agencies seek stakeholder concerns, but the engagement with diverse stakeholders has the potential to dilute the focus of the strategic decision, or change it to accommodate stakeholder preferences.

Research question 3: Over time, what factors influence the choice of one option from another in the range of regulatory discretion options available?

The inclusion of diverse stakeholders in the regulators' decision-making processes reflects an acknowledgement by the regulators of a pluralist policy environment. These engagements with stakeholders can be seen as a form of regulatory tool and thus as a means of enabling compliance (Pires, 2013). However, the involvement of stakeholders in the regulators' decision-making processes permeates the strategic processes beyond the application of risk-based regulation. Over time, stakeholders influence the choice of one option from another in the range of regulatory options available. On one hand stakeholders validate strategic decisions by being involved in the process, and also provide valuable knowledge and resources. On the other hand, their involvement

increases the number of players in decision-making and thus increases the risk of derailing the process, or subverting it to meet their own requirements.

As shown in chapters 5 and 6, the premise of including stakeholders in the decision-making process to garner support and maximise resources is a compelling one. However, in practice it can over time be undermined by political influences, for example where a strategic decision may not fit with broader preferences such as those of stakeholders. In these instances, tensions arise for decision-makers between basing decisions on well-founded risk considerations and being responsive to stakeholders' changed preferences or willingness to continue to participate in strategic decisions. The expansion of participants in decision-making has both benefits, including the deeper canvassing of choices and consequences before embarking on an action in order to maximise the success of the strategic choice (Coslovsky, 2011; Pires, 2011), and challenges, such as limiting those choices or derailing the process (Nutt, 2000). Whilst a broad range of evidence is used to identify problems, thus providing more nuanced problem identification, political factors such as managing stakeholder expectations can reframe the problem or subsequent approaches to the problem. This political dimension suggests risks are reinterpreted over time, based on social implications, rather than constructed from objective evidence.

As discussed in chapter 5, decisions start out as being problem based, contingent on risk deliberations. However, the regulatory agencies in some cases divert resources into responding to the public outcry to 'do something' about singular incidents that attract the attention of powerful stakeholders, the media or the government. If they do not respond, the regulators risk appearing to fail to address community expectations to adequately deal with tangible breaches of the legislation. These shifting and often competing goals require at times that the regulators deploy management attention and allocated resources away from strategic decisions in order to respond to immediate and evident risk concerns. Such trade-offs create particular tensions as often there is no capacity on the part of regulatory agencies to negotiate effective resolutions. Because of these limitations in framing alternative responses to these immediate risk situations, strategic decisions are, on occasion, delayed or amended.

Given these problematic considerations, stakeholder engagement mechanisms can perhaps be seen as responding to pressure to conform with public sector customer or client considerations, rather than reflecting a genuine desire to engage with stakeholders to develop approaches that best match the regulators' purpose. As presented in table 5.1, whilst respondents express differing rationales for engaging with stakeholders, the value in such engagements is similarly expressed as adding to the legitimacy of strategic decisions through generating ownership by affected stakeholders. Such assessments are tempered by the observation that political influences are still able to impact on the implementation of strategic decisions. Regardless of the potential for mixed outcomes, many respondents describe the engagement with their stakeholders as an important element in the development of programs of work. Indeed, as detailed in chapter 6, engaging with stakeholders was described by both middle managers and operating managers as intrinsic elements of their role in implementing strategic decisions.

As seen from the analysis of data, in varying degrees across all four regulatory agencies, the implementation of strategic decisions can be constrained by mechanistic decision-making processes that require multiple levels of approval. The identification of problems is interlinked with the broader strategic direction of the regulatory agencies and associated aspects of translating policy into strategies and actions. Despite this commitment to risk-based approaches that require flexibility to emerging and changing risks, the formal strategy process in the four regulatory agencies is linear and fixed, defined by public sector planning and approval requirements. The rather mechanistic nature of the public sector planning and reporting requirements thus does not necessarily provide the operational flexibility which the regulatory agencies need over time in order to respond to constantly changing risks and emergent problems that engage their attention.

The adoption of problem-solving methods based on the use of evidence, including wide-ranging information to identify and respond to risks, requires flexibility in order to respond to the changing nature of those problems as well as the environment in which decisions are crafted. Tensions however arise in the decision-making process where problem-solving is legitimately seen by regulatory agencies as a strategy to support decision-making, but those agencies are required to comply with the more traditional

strategic planning processes required within the public sector. Such accommodation of predetermined priorities and workplans can be antithetic to applying the principles of problem-solving which by nature are defined by ambiguity and flexibility. In addition, the imperative to address risks, often not yet emerged, and still be seen to respond to traditional performance expectations such as injury reductions, adds an additional layer of complexity for the four regulatory agencies as they also are required to report on outcomes of strategic decisions.

Non-traditional performance indicators such as risks removed or behavioural changes over time may be hard to measure and justify (Sparrow, 2000). Often these problems and approaches do not satisfy traditional measurement targets. One of the regulators' key strategic documents, the *Australian Work Health and Safety Strategy 2012-2022*, specifies targets based on percentage reductions over time in a number of defined areas, including incident rates and numbers of fatalities. Whilst the Strategy does not prescribe activities to achieve these outcomes, as noted in chapter 4 the regulatory agencies are required to report on activities and outcomes that contribute to these specified reductions. In this respect, tensions emerge between traditional public sector accountability measures and the necessary discretion to implement strategic decisions based on problem-solving methods.

The development of targeted approaches that require some discretion by middle or operating managers is attempted across the four regulatory agencies to varying degrees. Over time, though, a number of internal factors influence the choice of one option from another in the range of regulatory discretion options. One of these considerations is delays or revisits of approval by senior managers once strategic decisions are approved through the strategic planning processes. As detailed in chapter 6 delays in decision-making are the greatest challenge in implementing strategic decisions for both middle and operating managers. Whilst approval by top management and senior management levels address accountability requirements, delays or reconsiderations in decision-making processes means that in practice there is a lack of continuity in the action/feedback loop. These delays or uncertainties trickle down into operational levels, where at times staff allocated to strategic decisions are underutilised whilst waiting on clarification of those decisions.

A further internal challenge identified by some middle management respondents, as shown in chapter 6, is operational resourcing issues which present as tensions between preventative work such as in implementing strategic decisions, and responding to incidents and complaints. Whilst operational planning processes consider these exigencies, in practice managers are often dependent on the goodwill of colleagues in negotiating resources, including time. According to the literature, one important factor in implementing strategic decisions is the ability to mobilise sufficient resources, including extricating them from the routinised aspects of enforcement and compliance, in order to develop and deploy strategic decisions (Coslovsky, 2011; Pires, 2011). The comparative inactivity at times of those fully or partially allocated to implementing planned strategic decisions, in comparison to those engaged in reactive activities, is indicative of these competing priorities and claims for resources.

Politicians and policy makers require prompt responses to immediate concerns such as incidents and complaints, and to retain credibility and support, the regulatory agencies need to balance their preventative approaches with their response functions. This balance is difficult to achieve in an environment of competing priorities and reducing resources. For respondents in some of the regulatory agencies, the ongoing support and unwavering commitment by senior management to strategic decisions once they have been generated from the corporate planning processes is a necessary factor. For strategic decisions to persist in an operating environment of competing priorities and demands for resources, they must be seen to be relevant by virtue of this support.

Perspectives from Coslovsky's (2011) study of decision-making in regulatory agencies suggests that targeting based on fine tuning those areas for attention to the level where problems could be clearly identified and articulated, enables the development of tailored approaches in an open-ended way. Such tailoring requires a flexible environment where discretion about choices of tools can be exercised by decision-makers. Many respondents in all four regulatory agencies profess that the design of approaches is tailored to identified problems. However, as shown in chapter 5, in the implementation process those decision-makers construct existing approaches in a way which depicts them as innovative.

Despite the manifested support by senior managers of these avowed innovative approaches to identified problems, in some instances changes are made to details of strategic decisions by senior managers who are more comfortable with familiar approaches. The choice of options in designing and implementing approaches to identified problems across all four regulatory agencies is thus predominantly confined to selecting tools from the regulators' toolkit and applying these tools to broad categories of problems. These changes limit options for the search for effective tools to the application of familiar and accessible tools. Whilst the four regulatory agencies to varying degrees espouse the premise of an innovative approach to the development of solutions, the practice reveals that lack of senior management support can constrain the full promise of such an approach. Lack of support by senior management for open-ended searches for approaches to identified problems, including the use of tools which go beyond traditional and familiar applications, can be a critical factor in the choice of one option over the other.

Main research question: "In a risk-based regulatory environment, what are the strategic processes by which decision-makers interpret harmonised policy and translate it into strategies and actions?"

Having addressed the research sub questions 1 to 3, the following section now considers the main research question, that encapsulates the overall findings of this thesis. As ascertained from the literature, research on decision-making in regulatory agencies has not been sufficiently deconstructed to fully appreciate the contribution of complementary and interrelated elements impacting on those decision-making processes and practices. This thesis extricates those elements and a number of associated characteristics, and in doing so reveals the micro processes of decision-making within risk-based regulatory agencies. From the synthesis of findings across the four regulatory agencies, four key elements of direction, designation, development and deployment of strategic decisions can be identified. Each of these key processes are defined by specific characteristics. The elements and characteristics outlined below in table 7.1 reflect both shared and unique factors in regulatory agency strategic decision-making processes.

Table 7.1 Elements and characteristics of decision-making processes

Elements of decision-making processes		Significant characteristics of decision-making processes
Directing strategic approaches	Risk-based approach	A focus on preventative work based on risk profiling. Risk identification also encompasses business and political risks. Agency and business unit structure supports strategic approaches.
	Stakeholder engagement	Inclusion of stakeholder representatives at planning days or otherwise facilitation of their input into business planning.
	Strategy integration	Recognition of the <i>National Compliance and Enforcement Policy</i> as a strategic policy that also underpins operational tactics.
Designating strategic decisions	Responsiveness	Commitment to a service oriented or business friendly approach in engagement with stakeholders. Sensitivity to the compliance postures of regulated entities.
	Relevance	Management support of the decision reflected in the weighting of proactive work to reactive work. Dedicated resources made available to the strategic decision.
	Ratification	Decisions around implementation are timely and durable. Senior management support of strategic decisions which deflects political, stakeholder and other pressures.
Developing strategic decisions	Targeting	Internal data such as worker's compensation claims and number and types of breaches augmented with additional data from other sources in order to specify causation. Wide ranging research that sharpens targeting focus.
	Trialling	Piloting of proposed approaches to identified problems before they are fully implemented and changing those approaches if they are not working. An open-ended process that accommodates ambiguity.
	Validating	Stakeholders, both internal and external, provide input into the identification of problems and the development and implementation of approaches to identified problems.
Deploying strategic decisions	Transparency	All participants in the strategic decision process have a common and shared understanding of the evidence for the decision. Shared understanding of the rationale for the choice of tools.
	Legitimacy	Being authentic in engaging with all participants in the strategic decision-making process. Personal and organisational credibility a factor when seeking input to strategic decisions.
	Accountability	Being clear up front with stakeholders about expectations regarding actions and outcomes of strategic decisions. Performance reports framed around changes in behaviours rather than enforcement activity.

What emerges from these findings depicted above, is whilst there are many similarities between the regulators in their decision-making processes, there are also noteworthy differences. Some differences stem from the context, such as jurisdictional arrangements that shape strategic direction, or differing organisational structures and availability of resources. Each of the above elements and associated characteristics are further described below:

Directing strategic approaches

As detailed in chapter 4 all four regulatory agencies underwent significant changes over the period of the research. These changes included strengthened strategic focus on prevention based on risk profiling, and changes to internal structural arrangements, such as aligning functions to facilitate strategic decision-making processes. According to respondents in all four regulatory agencies, these changes better support those agencies' strengthened or increased strategic focus on prevention, and accordingly facilitate a coordinated approach to the development and delivery of strategic decisions.

Mirroring findings by Pires (2011) and Coslovsky (2011) in their respective studies, all four regulatory agencies use formal and informal stakeholder engagement mechanisms across the continuum of strategic planning and implementation of strategic decisions. The regulatory agencies' strategic priorities, goals and targets are established through participation of industry and other stakeholders in the planning process, in varying degrees and various levels of formality. This involvement ensures that the strategic direction of each of the regulatory agencies has the backing of those key stakeholders involved in setting that direction.

The four regulatory agencies also have a clearly articulated comprehension of the principles of risk-based approaches to decision-making. These risk-based approaches accommodate the complexity and inherent tensions in such approaches, whilst also being responsive to stakeholders' considerations of risk. Commensurately, all four regulatory agencies, to varying degrees, incorporate business and political risks, as well as identification of regulatory risks, into their strategic direction. Whilst this involvement of stakeholders is described by respondents as problematic in some instances, for example compromising the policy objective of the decisions, it also engenders trust in the regulators' strategic decision-making.

Also included in the development of strategic direction, to varying degrees, are key strategy and policy documents such as the *National Compliance and Enforcement Policy*. Although three of the four regulatory agencies saw this policy document as

predominantly aligned to operational decision-making, regulator A appreciated the function of the Policy as a foundation for strategic decision-making.

Designating strategic decisions

The four regulatory agencies demonstrate responsiveness to stakeholders by engaging with them to firstly confirm the strategic direction and secondly to participate in validating problems and approaches to those problems. The extent of this engagement varies, with a common theme across all four regulatory agencies of commitment to a service oriented or business friendly approach, as well as sensitivity to the compliance postures of regulated entities. Being open with stakeholders about proposed actions and potential outcomes of strategic decisions provides a level of credibility, with legitimacy of actions conferred via these processes.

Internally, as highlighted by Pires (2011), managers assume a critical role in organising and influencing regulators' work. Ideally then, ratification of strategic decisions is derived from management support which deflects political and other pressures and enables the decision-makers to progress designated work programs. For three of the four regulators, this management backing is variable, with only regulator D having this element in place to support the implementation of strategic decisions in a timely and durable manner. This support also extends to ensuring those implementing strategic decisions have the authority to progress, and if needed, modify agreed arrangements without seeking further approval.

Management support of strategic decisions is also reflected in the weighting of proactive work to reactive work, and for three of the four regulatory agencies, this is a particular challenge. However, regulator D, because of recent changes driven by government and supported by stakeholders, has a strengthened focus on preventative work, thus providing high level endorsement for this weighting towards proactive work. Notwithstanding this support, regulator D, like the other three regulatory agencies, all professed challenges in dedicated resources not being made available for strategic decisions.

Developing strategic decisions

All four regulatory agencies use data such as worker's compensation claims and number and types of breaches of work health and safety regulations. However, they all augment this operational data with data from a wide range of other sources in a dynamic process to more precisely target problem areas. Targeting of specific risks or industry sectors is enhanced by acquiring and interrogating context specific information.

The development of strategic decisions is framed by respondents in this study around problem-solving methods. This method targets problems through precise definition of the problem, trials various approaches to identified problems and validates assumptions with stakeholders as to the nature of the problem and the efficacy of the approach (Sparrow, 2000). Whilst priorities identified from the planning process frame the development of strategic decisions, those involved in implementation also, at times, exercise discretion in developing the details of those strategic decisions.

Whilst data and research firstly identify the potential problem, this proposition is then taken to the affected stakeholders through various formal and informal engagement mechanisms for further review, amendment and ratification. Stakeholders are included in developing tailored approaches. Approaches to identified problems are also ratified through trialling or piloting those approaches with affected regulated entities. This trialling provides a means to validate the problems as well the efficacy of the proposed approaches to those problems, thus adding responsiveness and relevance to the development of strategic decisions.

What is missing from all four regulatory agencies, with the exception to some extent of regulator D, is a coherent application of these espoused principles of tailoring solutions. Whilst all four regulatory agencies frame their selection of solutions as being open ended processes that facilitate tailoring of solutions, in practice such principles are not fully accommodated in the decision-making processes.

Deploying strategic decisions

In the four regulatory agencies client service considerations are framed around principles of transparency, including engagement mechanisms that facilitate input to strategic decisions. Moore (2000) emphasises legitimacy is conferred on the strategic decision by involving stakeholders in this manner. Such involvement of stakeholders when deploying strategic decisions enables acceptance by them, and thus provides credibility to the regulatory agencies and to the decision-making process.

Similarly, but importantly, transparency derives from this engagement as all participants including external parties have access to information. This access promotes a shared understanding of the details of the strategic decision, including the rationale for such decisions as based on evidence. Likewise, all four regulatory agencies use this engagement to share understanding of the rationale for the choice of tools employed in framing solutions.

One rationale for this transparency is to convey authenticity of purpose in engaging with all participants in the strategic decision-making processes. For the four regulatory agencies personal and organisational credibility is a factor when seeking input to strategic decisions. Being clear up front with stakeholders about expectations regarding actions and outcomes of strategic decisions aids transparency in the decision-making process.

As outlined previously, expectations regarding the regulators' accountability and performance are driven by larger central agencies, or by central offices of ministries that comprise a number of public sector bodies to which the regulatory agency belongs. These performance expectations are based on how successful the regulators are in delivering the broader policy imperatives of the legislation to influence work health and safety outcomes through their strategy implementation processes.

Whilst the inherent nature of risk-based approaches is often focused on hidden or not yet emergent risks, regulators are held accountable for specific actions taken and resources utilised. Reflecting these expectations, across all four regulatory agencies, performance reports are more generally predicated on output indicators such as numbers

of workplace visits or resolution of complaints, or broad indicators such as reductions in injury and illness rates. However, the inclusion of other performance indicators such as behavioural changes or risks mitigated or removed would better reflect preventative, rather than reactive, outcomes.

In conclusion, this study reveals that the application of harmonised risk-based policy across the four regulatory agencies provides a uniform basis for regulatory decision-making that is predicated on risks and based on the use of evidence. However, this uniformity starts to unravel at individual regulatory agency level, as decisions are made by top and middle managers and trade-offs extracted in the decision-making process due to a number of tensions. These include tensions from harmonised risk-based regulatory strategy and the application of problem-solving methods; the influence of stakeholders with perhaps conflicting perceptions of what evidence represents and at times fractious withdrawal from the decision-making process, and the capacity of the regulatory agency to frame effective tools, given the limitations in resources and discretion of those responsible for strategic decisions.

Theoretical, empirical and practical implications of the research

This study is distinctive in that it studies the ‘black box’ of strategic decision-making in risk-based regulatory agencies. As seen from the review of relevant literature, there are many theoretical and empirical insights into risk-based regulatory policy and aspects of decision-making. However, in reviewing the literature there was very little evidence of the internal decision-making arrangements of regulatory agencies which gives effect to strategy and actions through decision-making processes. Notwithstanding the adoption of harmonised risk-based regulation across many regulatory regimes there is limited commonality of forms of decision-making. This thesis examines these processes as undertaken by decision-makers in four such regulatory agencies by addressing the main research question and three subsidiary questions. A further consideration in addressing these questions is whether an overall strategic framework of strategic decision-making by risk-based regulators can be identified from the research.

Theoretical and empirical implications of the research

The examination of this understudied area reveals factors that impact on decision-making processes as harmonised risk-based regulatory policy is interpreted and translated into strategies and actions. What emerges from the findings in relation to the main research question is that whilst risk-based regulation is an established means of addressing regulatory problems, other contextual factors such as the broader adoption of NPM and NPG principles impact the decision-making processes of regulatory agencies. This research provides new insights into the decision-making processes of risk-based regulators at the strategy level. Some of these new insights reflect elements of Moore's strategic triangle (Moore, 1995) and the associated concept of public value. Moore's theory of strategising in the public sector is a normative theory of managerial behaviour that provides insights into what managers *should* do (Moore, 1995).

The first main element of Moore's (1995, 2006) strategic triangle is public value, or the overall mission or purpose of the organisation. From the examination in this study of risk-based regulators' strategic decision-making processes, the public value, or purpose, is implementing risk-based regulatory policy which reduces the regulatory burden on regulated entities. The second element from the strategic triangle reflected in this study is the authorising environment, defined by the sources of support and legitimacy from stakeholders who support the regulators' commitment to the development and implementation of strategic decisions. From this study, the authorising environment is defined by engaging with stakeholders and forming alliances in developing and deploying strategic decisions. The third element of the strategic triangle is the task environment, which when applied to strategic decision-making reflects how the regulators make choices from the options available to them in organising tools and other resources to address identified problems. Despite these parallels from this study to elements of the strategic triangle, the decision-making processes of the regulatory agencies in this study are not fully explained by normative models such as Moore's (1995, 2006), which is framed around the premise of putting strategy into action. Rather, this study opens the 'black box' of how regulatory decision-makers interpret policy and translate it into strategies and actions.

As previously highlighted, the adoption of NPM client service centric principles by the regulatory agencies in dealing with regulated entities extends the client relationship beyond the traditional model of responsiveness. Similarly, NPG situates the policy focus on stakeholder management (Osborne, 2010), and thus NPG principles place great import on stakeholder engagement in implementing strategy. Those making strategic decisions in the four regulatory agencies occupy a unique position at the intersection points of the strategic triangle, influencing and being influenced by agency, polity and policy. This positioning highlights the inherent tensions in dealing with competing demands for attention to the shifting perceptions of risk, and the ensuing contradictory message about what is important. These tensions derive in large part from particular aspects of engaging with stakeholders.

Stakeholder considerations, when framed around risk-based approaches and problem-solving methods identified in this study, provide a further perspective on those decision-making processes. Whilst there are considerations within the regulatory space that this engagement is based on coercion and therefore there is an unequal power relationship, the more recent application of the NPG paradigm of collaboration emphasises enabling rather than coercing. The recent shift to risk-based regulation and the confluence of NPG principles places the emphasis of stakeholder engagement on collaboration, rather than control (Salamon, 2002, p.vii). The reduction of emphasis on control or coercion shifts the framing of the engagement between the regulator and stakeholders to primarily one of choice, rather than compulsion. In this study stakeholders exercise an element of choice in their participation in the decision-making process, which in practice reshapes the strategic decisions and the resultant strategy. This reshaping is evident in the validation of problems, in the development of approaches to these problems and in the implementation of the strategic decisions, including redeploying resources and attention from strategic decisions.

In responding to stakeholder concerns, the direction of strategic approaches in all four regulatory agencies is based on risk. This risk environment encompasses the dynamic political environment that includes stakeholders. The management of political risks by the regulators requires an assessment of the degree to which government tolerates the discretionary application of a risk-based approach. This risk tolerance however is

inversely related to the degree of stakeholder responses. The more negative the response, the less tolerant government may be to risk (Mitchell et al, 1997; Moore, 1995). Responsiveness to stakeholders set up tensions over time which pull the regulators in different directions, and in some cases, dictates different outcomes for strategic decisions. The involvement of stakeholders both facilitates and inhibits the adoption of risk-based approaches to strategic decision-making.

Given this response to pressure from stakeholders, risks are over time not defined as merely matters of work health and safety, but are also understood, at times, as political. This differing assessment of the importance, or priority, of risks has implications for decision-making in regulatory agencies. One implication of adjusting decision-making processes to this political environment is that approaches to identified problems may be defensive, rather than prospective, and therefore limit the opportunity to canvass an array of approaches. A consequence of targeting ‘popular’ risks is attention is deployed from the original target, and decision-makers may subsequently be obliged to overlook or dismiss those risks. As discussed previously, this pressure to adjust the search for approaches to identified problems to comprise familiar or accepted modes can come internally from the operating environment, from senior management unwilling to support potentially contentious approaches which do not fit standard approaches, or externally from the authorising environment, from stakeholders who want to appear to be involved but prefer easier options.

Implications for practice

For decision-makers in regulatory agencies, limitations to discretionary scope also derive from strictures of public sector planning and budgeting processes as well as internal decision-making processes which inhibit discretion and decision-making autonomy. Other factors impacting on the choice of one option over the other include NPM practices of devolution of authority, including giving more autonomy to those implementing strategic decisions. In practice, however these decision-makers require constant approval by senior management for choices made. From findings in chapter 6, delays by management in approving decisions, as well as changing focus once approved, hinder the exercise of discretion by middle and operating managers as to how

and when actions in strategic decisions can be carried out, in effect diluting the autonomy over time of those decision-makers.

Additionally, the development of project plans by the regulatory agencies is double edged. The plans provide transparency and facilitate accountability, but also provide a means for the objective of the strategic decision to be compromised. Documented approaches make visible the details of strategic decisions, however by doing so attract pressure both internally from senior management and externally from stakeholders to accommodate preferred approaches rather than to seek innovative approaches to problems. Proponents of both a risk-based approach and problem-solving methods suggest these approaches shift the performance account from activity outputs such as notices and fines, to effectiveness outcomes in the form of behavioural changes, or risks mitigated or removed (Black, 2005; Sparrow, 2000). However, in practice the performance accounts of the four regulatory agencies are primarily framed around activity indicators such as workplace visits and numbers of notices issued, or amount of monetary penalties.

Despite comprehensive planning processes to ensure the focus is on identified risks, political influences are able to impact on the implementation over time of those plans. These impacts include diverting resources from planned preventative work to responding to incidents or complaints, or diverting attention to other identified problems. In his study of the role of managers in organising and influencing inspection work, Pires (2011) highlighted the link between management practices and frontline actions in translating policy into strategies and actions. The development and implementation of strategic decisions is dependent on a range of management practices that not only support the use of tools and engagement with affected parties, but also require an operational environment supporting creativity and flexibility.

In an environment of harmonised legislative arrangements, there is an expectation of consistency in regulators' strategic decision-making processes. Regulators adopting a risk-based approach have done so through orienting their regulatory approaches and operating activities to risk management concepts and principles. Implementing risk-based approaches and problem-solving methods as a means of guiding strategic

decision-making can be fraught with complications and challenges, particularly in a harmonised environment where there is an expectation of consistency and accountability. Decision-makers in regulatory agencies are expected to engage with their stakeholders and customers in the innovative design and consistent delivery of those strategies. At the same time, they are required to be transparent and accountable in those actions and processes, which are subject to influence by those stakeholders.

Notwithstanding the premise of decision-making processes in this study which reflect risk-based approaches and problem-solving methods, many of the aspects of strategic decision-making processes discussed in the preceding section, whilst noteworthy, are also in many respects aspirational. A consideration that emerged from this research is whether a practicable overall strategic framework of decision-making processes can be identified from the findings. Despite the availability of comprehensive guidance material setting out what regulators should do, it is delineated by centralised abstract premises rather than useful realistic practices. From the findings from the study, a framework for strategic decision-making has been developed that incorporates extant processual characteristics that have been developed and/or deployed across the four regulatory agencies to varying degrees, and provides a composite best practice model that is thus explainable and defensible. It also incorporates characteristics not fully realised in the explanation of these processes but which add to the intrinsic practical value of the framework. The framework is further explained in Appendix 10, based on a practical example of its application.

Contribution of the research

This thesis makes important theoretical and empirical as well as practical contributions to our knowledge of internal decision-making processes of risk-based regulatory agencies. Many studies on decision-making in regulatory agencies have focused on actions of frontline staff as they respond to identified harms and exercise their compliance and enforcement powers, or on responses of regulated entities to these interventions. Other more general studies on public sector decision-making are weighted to the consideration of discretion as a source of tension between policy goals

and street level policy implementation. In these studies, the strategic decision-making role of managers is often ignored.

In contrast to these approaches, this research offers significant empirical contributions to the research on public sector decision-making generally, and more specifically to risk-based regulators. Access over an extended period of time to four of the eight work health and safety regulatory agencies in Australia, at top, middle and operating management level, provide detailed and distinctive perspectives into their decision-making processes. From the findings of the longitudinal qualitative study, risk-based decision-making is based on NPM and NPG principles of stakeholder engagement, accountability and devolution of authority including the exercise of discretion. These findings uncovered that decision-making processes are underpinned by four interrelated elements and associated characteristics. These elements are direction, designation, development, and deployment. The characteristics include those common to all four regulatory agencies, as well as unique individual characteristics.

Further, this research extends regulatory strategic decision-making literature by demonstrating that two previously unconnected sets of literature, new public governance and regulatory practice, provide a cohesive and integrated set of principles which characterise strategic decision-making in a risk-based environment. By synthesising these previously unconnected sets of literature, this thesis has provided new knowledge of decision-making. This study of the 'black box' of strategic decision-making in risk-based regulatory agencies thus provides a unique understanding of what actually occurs in those regulatory agencies, not merely what should occur, as decision-makers interpret public policy and translate it into regulatory strategies and actions.

Despite the availability of comprehensive guidance material setting out what regulators should do, it is delineated by centralised abstract premises rather than useful realistic practices. This research thus also has several practical applications. Firstly, it points to decision-making processes to operationalise a risk-based approach that incorporates problem-solving methods. Secondly, it provides insights into those factors that both support and create challenges in delivering on the objective of such decision-making. Taken together, these results suggest the premise of putting risk-based decision-making

into practice is dependent on a number of significant identified elements and characteristics. Combining normative as well as analytical research aspects, these elements and characteristic were then assigned to a framework for decision-making (Appendix 10). These elements reflect many of the tenets of NPG, and accordingly, the framework may also be seen as a representation of NPG in action.

This research also makes a contribution to strategy-as-practice, a relatively new and evolving stream of research, which has attracted some varying and sometimes conflicting positions regarding its approach. Despite these differences, strategy-as-practice is differentiated by being based on an empirical inquiry around the *doing* of strategy. To that extent this research contributes to strategy-as-practice research by providing knowledge of an understudied area of strategy research at an organisational level. Jarzabkowski et al (2007) consider the objective of strategy-as-practice research is “plausibly to explain some aspects of an activity which may be considered consequential at the chosen level of analysis” (p.17-18).

The specific contribution of this study to strategy-as-practice is an analysis of what people *do* in relation to the development of strategic decisions in risk-based regulatory agencies. Jarzabkowski and Spee (2009) identify that comparatively little attention has been given to the role of middle managers as aggregate actors at the organisational, or meso level. The focus of this study is primarily through praxis, that is, how strategic work takes place at the organisational, or meso, level, but designed to draw out the specific actions of the various management levels, with a focus on middle managers involved in implementing strategy. Accordingly, this research provides new insights into the more micro level practices of decision-making, and contributes to the growing repository of strategy-as-practice research. By claiming this contribution, it may also add to the discussion of exactly what strategy-as-practice research is, and that also is a noteworthy contribution.

Limitations of the research

Numerous respondents across all four regulatory agencies affirmed the prominence and influence of stakeholders in the processes of decision-making. Consequently, one of the

limitations of this study lies in the absence of stakeholder responses to aspects of these processes. As seen from the analysis of data, stakeholders play pivotal roles which encompass many aspects of decision-making, from developing strategic plans including operational plans such as projects that are generated from strategic decisions, through to development of approaches to identified problems. Whilst the views of stakeholders would have provided additional knowledge of decision-making processes, the scope of the study precluded their inclusion.

Further limitations lay in the research approach. Taking a strategy-as-practice lens to examine strategic decision-making processes reveals the micro-processes of decision-making. It reveals knowledge about the *doing* of strategy. Whilst the research was carefully developed and administered, comprising a longitudinal study that involved both current and retrospective data collection over two phases, the analysis was predominantly reflective. The use of semi-structured interviews as a research methodology provided some safeguard against recollection bias, as respondents were able to be prompted for clarification and explanation. Additionally, the questionnaires and examination of documentation provided triangulation. However, a longitudinal real time observational study would reveal more nuanced aspects of decision-making.

As detailed in chapter 3, the nature of the research design required close interaction with interview participants at top and middle management levels. Given the researcher's employment history with a work health and safety regulator, there was familiarity not only with the regulatory agencies but also with many of the participants in this study. This had the benefit of establishing credibility and trust. However, it also in some instances created expectations that because of that prior knowledge, it was not necessary to fully impart requested information, as it was assumed to be already known. Reflecting this expectation, a number of respondents prefaced their answers with the comment "as you know". One of the ways in which this potential influence of the researcher was minimised was through ensuring each respondent was asked the same questions, in the same way.

Another potential limitation was in the closeness of the researcher to the topic. Whilst this closeness had the benefit of bringing knowledge and experience to the consideration of the research problem, it also provided a challenge in ensuring that this prior knowledge and experience did not influence the analysis of the data. Consequently, the analysis, as detailed in figure 3.4 and the subsequent discussion, was meticulously structured and documented. Additionally, the use of various forms of evidence, including two levels of interviews with managers, a questionnaire administered to a third management level, and a range of documentation, provided corroboration of evidence and triangulation of data.

Future Research

This research explores a previously understudied area, and commensurately will serve as a base for future studies on decision-making in risk-based regulatory agencies. The findings of this study have a number of implications for future research, especially in relation to stakeholders. Further research might explore how the inclusion by risk-based regulators of their stakeholders in decision-making processes sets and shapes the actions and outcomes of those decisions. For example, Mitchell et al.'s (1997) classification of stakeholders in relation to managerial perceptions of those stakeholders' characteristics of power, legitimacy and urgency could be a relevant model to apply in studying the influences of stakeholders in regulators' strategic decision-making process.

Further research could also be carried out to determine the practical efficacy of the framework for strategic decision-making as a normative model for decision-making. Recognising that differing social, political and economic environments exist across the various jurisdictions, research on which aspects of the framework work best under which circumstances would contribute to further knowledge about decision-making processes of risk-based regulatory agencies, and the applicability of a general framework to those processes. Such research would not only advance the practice of decision-making, it would also bolster the conversation between regulators and academics to improve linkages between research, policy and practice.

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Appendix 1

Dr. Jennifer Waterhouse
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**Organisational Participant Information Statement for the Research Project: From
Premise to Practice – the Application of Problem Solving in a Regulatory
Environment.**

You are invited to participate in the research project identified above which is being conducted by Dorothea Betts, who is enrolled in the Doctor of Philosophy (Management) program in the Newcastle Business School at the University of Newcastle. The research proposal was presented to the Heads of Workplace Safety Authorities meeting on 26th April 2012, at which you indicated your willingness to participate in the research and nominated a representative from your organisation to coordinate participation, including the provision of specified policy and planning documents and the distribution, or direction of distribution, of participant information statements, consent forms and questionnaires.

Why is the research being done?

The study will determine the operational management processes in putting risk based regulatory intentions into practice, and thereby contribute to greater understanding of the ways in which policy outcomes are enabled through the strategic management process. The research will contribute to the knowledge and understanding of possible best practice in regulatory decision making.

Who can participate in the research?

Those staff that work within a managerial role and are responsible for key operational strategic and tactical activities, including planning, operational decision making, resource allocation, monitoring and control, and consideration/approval/implementation of action plans will be invited to participate in the interviews or questionnaires.

What choice will staff have?

Participation in this project is entirely voluntary. Only those people who give their informed consent will be included in the project. Only the researchers identified below will be aware of who is participating or not participating in the research.

What would staff be asked to do?

Initially the nominated organisational representative will be asked to provide access to specified policy and planning documents, and to facilitate access to an office or other private facilities to conduct interviews. Relevant staff initially identified through the nominated organisational representative will be asked to take part in an interview of around 45-60 minutes. The purpose of the interview is to identify the high-level strategic planning processes that result in the definition of regulatory problems that require a concentrated and coordinated approach by the regulator, as well as identify how the decisions from the planning and review processes are/have been implemented.

From that process staff who have responsibility for implementing specified work programs from the organisational strategic plan will be approached through the nominated organisational representative via internal email to participate in an anonymous online questionnaire, that should take 15 to 20 minutes to complete.

What are the risks and benefits of participating?

There are no risks or direct benefits for individuals participating in the interview. An indirect benefit to the organisation is that a possible outcome of the research is the identification of an overarching operational framework for organisational regulatory discretion/problem solving for regulators.

How will privacy be protected?

Only the researchers identified below at the University of Newcastle will have access to responses to the interviews and questionnaires. The data that is collected through this research will have identification removed during the analytical process. No information that can identify any individual will be included in any of the research outcomes including thesis and any journal articles. All hard and soft copies of data and associated records will be kept in password protected laptop and/or USB and/or a locked cabinet in a secure swipe card protected office of the project supervisor. In accordance with the University of Newcastle's policy and procedures the collected data will be stored for a minimum of five years, and be disposed of in accordance with the University of Newcastle's policy and procedures for the confidential disposal of confidential material.

How will the information collected be used?

The data collected for this research will be reported through the submission of a thesis in accordance with the University of Newcastle research higher degree requirements including the relevant policies and codes. Results of the research may also be reported in journal articles and/or conference/symposium proceedings. No individual participants will be named in any reports or papers or any other output from the research. A report of the research findings will be provided to participants on request. A presentation on the research findings will be provided to the Heads of Workplace Safety Authorities on request through the Chair.

What do you need to do to participate?

Please read this Information Statement and be sure you understand its contents before you consent to participate. If you decide to participate please complete and return the attached Consent Form and return it by email to dorothea.betts@uon.edu.au.

Further information

If you would like further information, or if there is anything you do not understand, or you have any questions, please contact any of the researchers on the contact details below.
Thank you for considering this invitation.

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Complaints about this research

This project has been approved by the University's Human Research Ethics Committee, Approval No. H-2012-0410.

Should you have concerns about your rights as a participant in this research, or you have a complaint about the manner in which the research is conducted, it may be given to the researchers, or, if an independent person is preferred, to the Human Research Ethics Officer, Research Office, The Chancellery, The University of Newcastle, University Drive, Callaghan NSW 2308, Australia, telephone (02) 49216333, email Human-Ethics@newcastle.edu.au.

Appendix 2

Dr. Jennifer Waterhouse
Room SRS149,
Newcastle Business School
University Drive,
Callaghan, NSW 2308

**Participant Information Statement for the Research Project: From Premise to Practice
– the Application of Problem Solving in a Regulatory Environment.**

You are invited to participate in the research project identified above which is being conducted by Dorothea Betts, who is enrolled in the Doctor of Philosophy (Management) program in the Newcastle Business School at the University of Newcastle.

Why is the research being done?

The study will determine the operational management processes in putting risk based regulatory intentions into practice, and thereby contribute to greater understanding of the ways in which policy outcomes are enabled through the strategic management process. The research will contribute to the knowledge and understanding of possible best practice in regulatory decision making.

Who can participate in the research?

You are eligible to participate if you work within a managerial role and are responsible for key operational strategic and tactical activities, including planning, operational decision making, resource allocation, monitoring and control, and consideration/approval of action plans.

What choice do you have?

Participation in this project is entirely voluntary. Only those people who give their informed consent will be included in the project. Whether or not you decide to participate, your decision will not disadvantage you. If you do decide to participate you may withdraw from the project at any time without giving a reason. Only the researchers identified below will be aware of who is participating or not participating in the research.

What would you be asked to do?

If you agree to participate, you will be asked to take part in an interview of around 45-60 minutes. The purpose of the interview is to identify the high-level strategic planning processes that result in the definition of regulatory problems that require a concentrated and coordinated approach by the regulator, as well as identify how the decisions from the planning and review processes are/have been implemented. The interviews will be arranged by the researcher and take place at your place of employment. Your verbal consent will be confirmed and recorded at the beginning of each interview. Interviews will be audio-recorded and by hand written notes.

What are the risks and benefits of participating?

There are no risks or direct benefits for individuals participating in the interview. An indirect benefit is that a possible outcome of the research is the identification of an overarching operational framework for organisational regulatory discretion/problem solving for regulators.

How will your privacy be protected?

Only the researchers identified below at the University of Newcastle will have access to your responses to the interviews. The data that is collected through this research will have identification removed during the analytical process. No information that can identify any individual will be included in any of the research outcomes including thesis and any journal articles. All hard and soft copies of data and associated records will be kept in password protected laptop and/or USB and/or a locked cabinet in a secure swipe card protected office of the project supervisor. In accordance with the University of Newcastle's policy and procedures the collected data will be stored for a minimum of five years, and be disposed of in accordance with the University of Newcastle's policy and procedures for the confidential disposal of confidential material. You have the right to review and edit the transcript of your interview. Additionally, a summary of the results of the data analysis will be provided to the participants to check the consistency of interpretations and therefore assist the reliability of the findings.

How will the information collected be used?

The data collected for this research will be reported through the submission of a thesis in accordance with the University of Newcastle research higher degree requirements including the relevant policies and codes. Results of the research may also be reported in journal articles and/or conference/symposium proceedings. No individual participants will be named in any reports or papers or any other output from the research. A report of the research findings will be provided to participants on request. If you would like to receive such a report please contact one of the researchers at the contact details below.

What do you need to do to participate?

Please read this Information Statement and be sure you understand its contents before you consent to participate. If you decide to participate please complete and return the attached Consent Form in person to Dorothea Betts, or return it by email to dorothea.betts@uon.edu.au.

Further information

If you would like further information, or if there is anything you do not understand, or you have any questions, please contact any of the researchers on the contact details below.
Thank you for considering this invitation.

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Should you have concerns about your rights as a participant in this research, or you have a complaint about the manner in which the research is conducted, it may be given to the researchers, or, if an independent person is preferred, to the Human Research Ethics Officer, Research Office, The Chancellery, The University of Newcastle, University Drive, Callaghan NSW 2308, Australia, telephone (02) 49216333, email Human-Ethics@newcastle.edu.au.

Appendix 3

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Information Statement for the Research Project: From Premise to Practice – the Application of Problem Solving in a Regulatory Environment.

You are invited to participate in the research project identified above which is being conducted by Dorothea Betts who is enrolled in the Doctor of Philosophy (Management) program in the Newcastle Business School at the University of Newcastle.

Why is the research being done?

The study will determine the operational management processes in putting risk based regulatory intentions into practice, and thereby contribute to greater understanding of the ways in which policy outcomes are enabled through the strategic management process. The research will contribute to the knowledge and understanding of possible best practice in regulatory decision making.

Who can participate in the research?

You are eligible to participate if you have responsibility for implementing specified work programs from the organisational strategic plan.

What choice do you have?

Participation in this project is entirely voluntary. Only those people who give their informed consent will be included in the project. By completing the online questionnaire, you are consenting to participate in the research project. Your details will not be known to the researcher as the questionnaire will be distributed internally by your agency, which has legitimate access to your name and email address. Whether or not you decide to participate, your decision will not disadvantage you.

What would you be asked to do?

If you agree to participate, you will be asked to complete an electronic questionnaire that will be distributed internally via your email address by your employer. Your name will not be made available to the researchers nor will your employer know if you have completed the questionnaire. The questionnaire will include a combination of open and closed questions, and should take no longer than 20 minutes to complete. Your employer will not see your responses to the questionnaire. The questionnaire will be returned directly to the researcher, with any identifying details removed in order to preserve your anonymity.

What are the risks and benefits of participating?

There are no risks or direct benefits for individuals participating in the interview. Nobody will know whether or not you decide to participate in the questionnaire. Whether or not you decide to participate, your decision will not disadvantage you. An indirect benefit is that a possible outcome of the research is the identification of an overarching operational framework for organisational regulatory discretion/problem solving for regulators.

How will your privacy be protected?

Participation is anonymous and only the researchers identified below at the University of Newcastle will have access to your responses. The data that is collected through this research will have identification removed during the analytical process. No information that can identify any individual will be included in any of the research outcomes including thesis and any journal articles. All hard and soft copies of data and associated records will be kept in password protected laptop and/or USB and/or a locked cabinet in a secure swipe card protected office of the project supervisor. In accordance with the University of Newcastle's policy and procedures the collected data will be stored for a minimum of five years, and be disposed of in accordance with the University of Newcastle's policy and procedures for the confidential disposal of confidential material.

How will the information collected be used?

The data collected for this research will be reported through the submission of a thesis in accordance with the University of Newcastle research higher degree requirements including the relevant policies and codes. Results of the research may also be reported in journal articles and/or conference/symposium proceedings. No individual participants will be named in any reports or papers or any other output from the research. A report of the research findings will be provided to participants on request. If you would like to receive such a report please contact one of the researchers at the contact details below.

What do you need to do to participate?

Please read this Information Statement and be sure you understand its contents before you consent to participate. You will be sent a link to an online questionnaire by your employer through your individual work email address. If you decide to participate please complete the questionnaire, which will have any means of identification automatically removed through the questionnaire software, and then returned directly to the researcher.

Further information

If you would like further information, or if there is anything you do not understand, or you have any questions, please contact any of the researchers on the contact details below.

Thank you for considering this invitation.

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Complaints about this research

This project has been approved by the University's Human Research Ethics Committee, Approval No. H-2012-0410.

Should you have concerns about your rights as a participant in this research, or you have a complaint about the manner in which the research is conducted, it may be given to the researchers, or, if an independent person is preferred, to the Human Research Ethics Officer, Research Office, The Chancellery, The University of Newcastle, University Drive, Callaghan NSW 2308, Australia, telephone (02) 49216333, email Human-Ethics@newcastle.edu.au.

Appendix 4

Top Manager Interview Guide (Phase 1)

Please confirm your title.

Describe your role and responsibilities.

Describe your organisational structure including the titles of your direct reports.

What are the roles and responsibilities of your direct reports?

What do you understand by risk-based regulation?

What is your Division's business strategy?

From that what are the key priority areas?

How are these identified?

What involvement do you have in identifying these?

Explain the criteria by which the strategic decisions that resulted from the planning process were made.

Describe the governance arrangements around the strategic management process.

How, if at all, does the *National Compliance and Enforcement Policy* fit into the strategic planning process?

Are there any implications for your business unit in implementing the strategic decision?

Appendix 5

Top Manager Interview Script (Phase 2)

Describe the alignment of the business strategy and key priority areas identified in stage 1 with current strategy and priority areas.

Identify if any changes were made and if so, why?

In relation to strategic decision (specify) please describe the mechanism by which the strategic decision was made.

Describe how the problem that underpinned the strategic decision was identified.

Detail the intention of the strategic decision.

What mechanisms are in place to monitor the implementation of the strategic decision?

Detail the infrastructure in place to support decision making.

Explain how the strategic decision is being implemented.

Appendix 6

Middle Manager Interview Script (Phase 1)

Please confirm your title.

Please locate your position on the organisation chart and/or describe your position in the organisational structure.

Please describe your role and responsibilities in relation to the strategic decision.

What are the roles and responsibilities of your direct reports? (if not referred to in previous responses)

What do you understand by risk-based regulation?

What is your role in the development of the strategic decision?

What is your role in the implementation of the strategic decision?

What resources are allocated to support the strategic decision?

What tools are being utilised in the design of the strategic decision response?

Why have those tools been chosen?

What competencies are required for personnel implementing the strategic decision?

Are there any challenges in managing the strategic decision?

How are these challenges being addressed?

Explain the use of the *National Compliance and Enforcement Policy* in the overall strategic decision process?

What is the single most important thing that could be done in the organisation to support the implementation of the strategic decision?

Appendix 7

Middle Manager Interview Script (Phase 2)

What is your role in the implementation of the strategic decision?

How was the solution to the identified problem developed?

What resources are allocated to support the strategic decision?

What tools are being utilised in the design of the strategic decision response?

Why have those tools been chosen?

Are there any challenges in managing the strategic decision?

How are these challenges being addressed?

What is the single most important thing that could be done in the organisation to support the implementation of the strategic decision?

Appendix 8

Questionnaire

Note: the term “strategic decisions” below is used to describe major proactive programs of work/campaigns that have been identified and/or implemented as part of the [regulatory agency] strategic planning process in the 2013-14 planning year (that is July 2013 to current). It involves the definition of regulatory problems that require a concentrated and coordinated approach by the regulator, and includes decision making processes on targeting priority areas and the use of discretion in the design of solutions to the defined regulatory problems.

1. Please identify your position by clicking on the choice below that most closely reflects your position. For positions not on the list, click other:

- ☐ Manager/supervisor
- ☐ Project Officer
- ☐ Policy Officer
- ☐ Inspector
- ☐ Technical Officer
- ☐ Data Analyst
- ☐ Other (please specify)

2. Please list three (3) key activities that you undertook in 2013/14 that were directly related to the day-to-day implementation of the strategic decisions:

3. What was your level of involvement in 2013/2014 the implementation of the strategic decisions? Please indicate from the box below.

	All of the time	Most of the time	About half the time	Less than half the time	Practically never
The amount of my work time in the last five working days that was directly related to the strategic decisions.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

4. I am familiar with the National Compliance and Enforcement Policy as a nationally endorsed policy that sets out the approach work health and safety regulators will take to compliance and enforcement. (If YES directed to question 5, if NO question 5 hidden and directed to question 6)
5. I believe that the tools identified in the National Compliance and Enforcement Policy are used effectively by [regulatory agency] in developing solutions to regulatory problems. (Note: tools refers to the range of actions that are available to the regulator to encourage and assist compliance).

- ☐ Strongly Agree
- ☐ Agree
- ☐ Neither Agree nor Disagree
- ☐ Disagree
- ☐ Strongly Disagree

6. What is your level of understanding of the rationale for the strategic decisions identified and/or implemented in 2013/2014, based on use of evidence. Please indicate from the box below.

	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
I believe the organisation uses evidence in its strategic planning processes to identify priorities.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
I believe that the strategic decisions are based on evidence.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7. Please rank any of the factors listed below in order of importance to you that you identify as important in the implementation of the strategic decisions. Place your cursor on the relevant factor to move it to the desired ranking. Rank the most important 1, the next 2 and so on.

- It is relevant to the rest of the organisation
- Other priorities accommodate the strategic decision
- Other events do not divert attention from the strategic decision
- Communication of the strategic decision is adequate
- The roles and responsibilities of people working on the strategic decision are clear
- Management are fully committed to the implementation of the strategic decision
- The strategic decision is monitored
- The strategic decision is evaluated
- Problems in implementation are dealt with by managers
- Other (please describe)

Thank you for participating

Appendix 9

This section provides an overview in table below of key themes as they were developed from the finding of the analysis of the data from the four regulatory agencies.

Themes and key words from data analysis

Themes and key words from data analysis	
First order categories	Themes
Strategic direction; old approach; operational planning; participation; strategic framework	Strategic direction
Risk-based approach; political factors; risk-based planning	Risk-based approach
Customer focus; community focus; culture; new approach/direction	Customer focus
Identification of problems; data sources; data analysis; evidence	Identification of problems
Development of solutions; targeting; use of tools	Development of solutions
Validation of data; field validation; validation of assumptions; piloting	Validation
Stakeholder engagement; stakeholder validation	Stakeholder engagement
Coordination; approvals; program management; resources; skills and competencies; management tools; project approach	Operational management
Transparency; centralisation; consistency; credibility; legitimacy	Accountability

Strategic direction

The first order categories of ‘strategic direction’, ‘old approach’, ‘operational planning’, ‘participation’ and ‘strategic framework’ comprise the theme of strategic direction. The term ‘strategic direction’, and to a lesser extent ‘strategic framework’, were used by most of the respondents, particularly the top managers. This reflected their stated role in developing and setting the parameters for the strategic plan as well as ratifying, recognising and directing (Floyd and Lane, 2000). Consistent with their role in strategic planning, many of the middle managers used the term ‘operational planning’ or terms consistent with undertaking tactical activities in implementing strategy, including resource allocation, monitoring and control. The term ‘old approach’ was used by at least one of the two top managers in the four regulatory agencies in comparing the current strategic direction to that in place previously. The use of the term ‘participation’ related to responses where an internal collaborative or inclusive approach was explained as being intrinsic to aspects of strategic or operational planning.

Risk-based approach

This theme comprises first order categories of ‘risk-based approach’; ‘political factors’ and ‘risk-based planning’. The first order term of ‘risk-based approach’ is differentiated in the coding and categorising process from the data derived from the question that specifically asked for a definition from respondents of that term. In the broader data analysis and coding of the first order categories, it relates to contextual comments made by respondents in all four regulatory agencies and in both phases of the study when defining the underpinning rationale for actions and activities. A feature identified by a number of respondents as being specifically related to the planning processes was ‘risk-based planning’ consisting of identification of workplace, business and political risks. Consistent also across a number of respondent groups was the use of the term ‘political factors’ or terms relating to it. These arose from instances of government direction or priorities, as well as instances of stakeholder exertion of influence on government to drive those directions or priorities.

Customer focus

The theme of customer focus was generated by a number of first order categories, one being the category of ‘customer focus’. This category was strongly represented in the data, particularly from the middle managers in phase two. Other first order categories that were rolled up into the customer focus theme were ‘community focus’, which from the context in which it appeared was a sub-set of customer focus; ‘culture’, which was mentioned in similar contexts in stage one and again in stage two as being framed around a customer approach; and ‘new approach/direction’ which was referred to by the interview respondents in the context of a new or strengthened focus on customers or clients. This latter aspect was more pronounced in the top manager data sets.

Identification of problems

Consistent across all the respondent groups was the explanation of the use of the term ‘data sources’ ‘evidence’ and the ‘analysis of data’ as intrinsic to the identification of problems that defined the focus of the strategic decisions. The term ‘identification of problems’ was used to describe regulatory agencies’ explanation of their rationale in

selecting areas for attention in developing strategic decisions. A number of respondents expressly associated the term with a problem-solving approach as defined by Sparrow (2000) which requires the nomination of a problem and the precise definition of that problem.

Development of solutions

A number of respondents across all four regulatory agencies in both phases of the research used the term ‘development of solutions’ in detailing an aspect of the processes of strategic decision making. The contributing features of ‘targeting’ and ‘tools’ were designated by at least one respondent in each work site as being factors that were considered when implementing strategic decisions. The development of solutions comprised specific features of the problem concerned with selected tools from the range of regulatory tools available.

Validation

The concept of validation was incorporated across several areas of the data as both primary and secondary concepts. The term ‘validation of data’ was used by at least one respondent in each work site to describe the process of confirming the data analytics that were used to identify and specify problems. For some respondents, this was also a consideration in the use of the term ‘validation of assumptions’ in connection to what the data was telling them about the problem, as well as assumptions about the solution. This was linked to concepts of ‘field validation’, that is taking assumptions to field-based operatives and stakeholders for input. It also included piloting potential solutions before progressing to full implementation.

Stakeholder engagement

Stakeholders were also mentioned as another source of validation. However, given the contextual emphasis placed on stakeholder engagement in the interview data, this validation was identified as a unique aspect of ‘stakeholder engagement’. ‘Stakeholder engagement’ was a factor identified by the majority of respondents across all four regulatory agencies, with some providing multiple references to this factor across the

interview. It referred to both formal and informal engagement mechanisms across the continuum of strategic planning and implementation.

Operational management

The theme of ‘operational management’ encompassed a range of generic self-explanatory management functions including ‘coordination’; ‘approvals’ ‘meetings’ and ‘resources’. These were terms used by both top and middle managers across all four regulatory agencies at both phases, reflecting the primacy of these functions for these position holders. In addition, some respondents referred to specific analytical frameworks or reporting data bases that were framed under the term ‘management tools’. Some respondents used the specific term ‘project approach’ to describe a mechanism used to develop and deploy strategic decisions. ‘Resources’ included both financial and human resources. A related concept to resources was relevant ‘skills and competencies’ that were identified by respondents as particularised requirements for the implementation of strategic decisions.

Accountability

The concepts ‘centralisation’, ‘consistency’; ‘credibility’; and ‘legitimacy’ were described by a number of respondents across all the regulatory agencies as factors that contributed to being accountable for actions and outcomes in the strategic decision-making process. ‘Centralisation’ for a number of respondents in one work site was a way of organising around strategic decisions. For a number of respondents ‘consistency’ was located in the concept of a common experience for those impacted by the strategic decision. ‘Credibility’ and ‘legitimacy’, for those who identified these as factors were related to reputation, both personal and organisational.

Appendix 10

Explanation and practical application of strategic decision-making framework

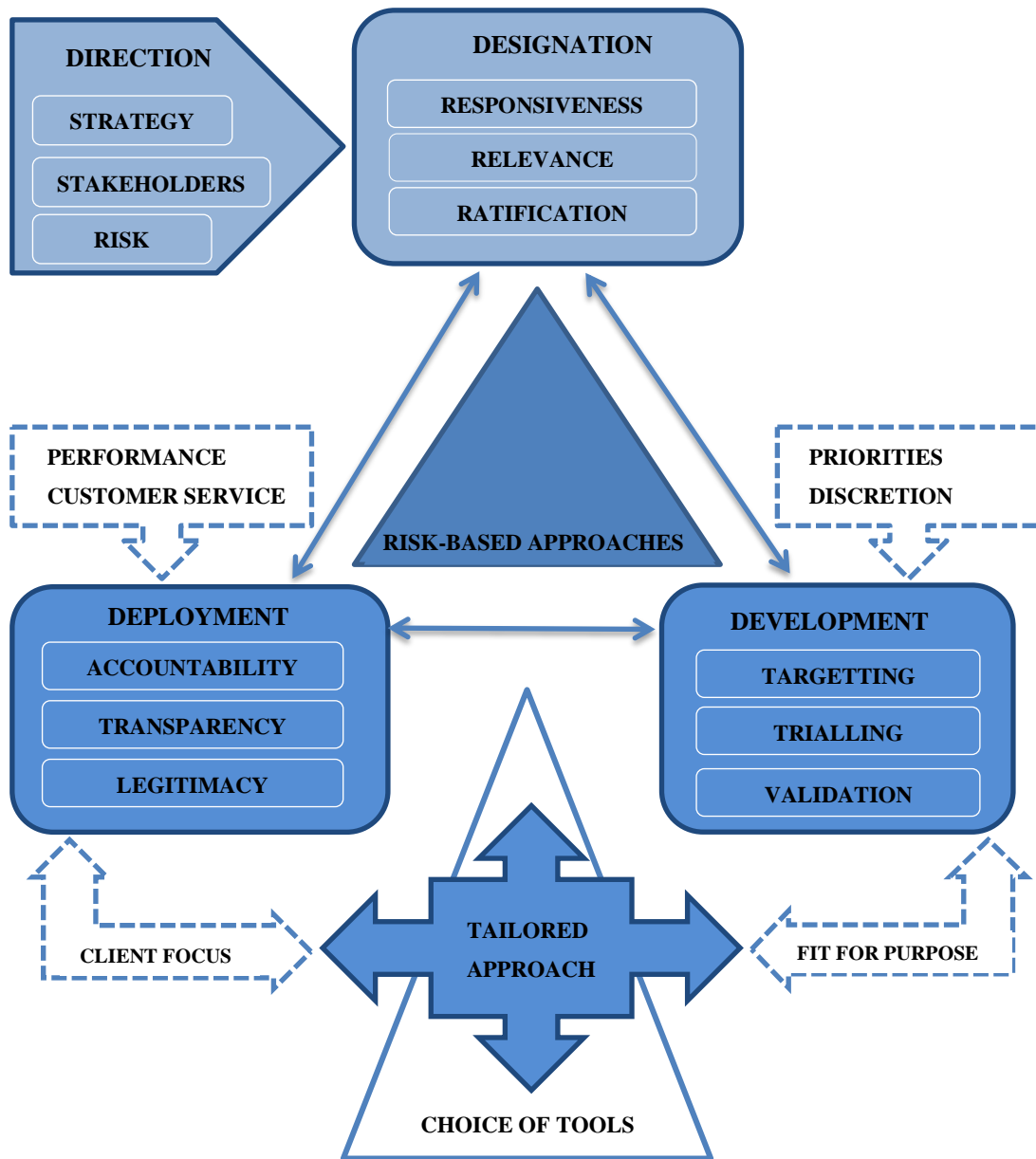
A consideration which emerged from this research is whether an overall strategic framework of decision-making processes can be identified from the findings.

Approaches to social problems such as work health and safety are addressed within a complex environment where harm and the nature of harm, are, if not unknown, are not yet fully evident. Developing and implementing approaches to identified problems through strategic decision-making processes requires a specific management approach, including to a range of factors, in order to fully realise a risk-based approach. Despite the availability of comprehensive guidance material setting out what regulators should do, it is delineated by centralised abstract premises rather than useful realistic practices.

The following section now connects the findings from the study by integrating them in a framework of strategic decision-making. A framework is distinguished by defined variables and the relationship between these variables (Ostrom, 2011). Accordingly, this framework, depicted in figure 10.1 below, establishes interconnected relationships between distinctive characteristics which have been integrated into a cohesive, holistic framework for decision-making that incorporates internal and external exigencies. This framework comprises non-linear interactive dimensions that consider external political and social contexts, as well as internal organisational conditions. It is however not overly simplistic nor unduly prescriptive (Ostrom, 2011) and thus can be applied across a range of jurisdictional adaptations, particularly where harmonised arrangements promise consistency but are underpinned by discretionary risk-based approaches to decision-making.

This framework for decision-making incorporates extant processual characteristics that had been developed and/or deployed across the four regulatory agencies to varying degrees and provides a composite best practice model that is thus explainable and defensible. It also incorporates characteristics not fully realised in the explanation of these processes but which add to the intrinsic practical value of the framework.

Figure 10.1: Framework of risk-based strategic decision-making



This framework is centred on risk-based approaches to the designation, development and deployment of strategic decisions directed at corporate planning level to be implemented from strategic planning processes. The practical aspects are highlighted through the use of a work health and safety problem, obtained from Safe Work Australia web site: <http://www.safeworkaustralia.gov.au/sites/swa/australian-strategy/pages/australian-strategy>, to explain the application of the framework. (Note: Key aspects of the framework are shown in **bold** in the following discussion)

A key element of the process is the tailoring of approaches to identified problems, drawn from the choice of tools not only from the regulators' toolboxes but incorporating open-ended processes to ensure that approaches are tailored to the problem. This approach reflects prioritisation of problems and discretion in the choice of problems, as well as the development of approaches to these identified problems. Public sector considerations of customer service and performance reporting are accommodated in the process.

As depicted in the top left elements in the figure above, the central feature of the framework is the direction of organisational **strategy** through an overarching corporate plan, which also incorporates high level government plans to ensure alignment with broader government requirements. These plans incorporate a **risk based approach** that also underpins strategic decisions. Political risks are mitigated by the inclusion of external **stakeholders** in the strategic planning process, as are business risks by ensuring that internal stakeholders are included in the planning process and/or assist in the identification of risks.

From organisational strategic planning processes, regulators identify problems that are also based on risk-based principles that encompass jurisdictional risks, as determined from available data, as well as political and business risks determined from a range of environmental scanning mechanisms to determine agency specific risks. The *National Work Health and Safety Strategy 2011-2022* identified agriculture as one of two industry priority areas. In this example, quad bikes are a designated problem due to the high incidence of serious injury and fatality arising from their use in rural areas. Reducing the incidence of fatalities would contribute to one of the key performance targets of at least 20 percent reduction in the number of worker fatalities due to injury.

Looking at the **DESIGNATION** element of the framework, designation of the strategic decision is based on the concepts of **responsiveness** to a service oriented approach to strategic decisions as well as to the compliance postures of those being regulated. Farms are generally family run businesses, so accordingly this is taken into consideration when designating quad bikes as a problem. Elements of designation also address the need for **relevance** of strategic decisions within the regulatory agency, particularly in an

environment of conflicting priorities where there is an expectation from government and the community that regulators respond to incidents as they occur as well as seek out risks to prevent occurrence. In this example, resources are allocated to this strategic decision, in effect deploying them from reactive work. **Ratification** of the strategic decision is derived from management support which deflects political and other pressures and enables the decision-makers to progress designated work programs. This support also extends to ensuring that those implementing strategic decisions have the authority to progress and if needed modify agreed arrangements without seeking further approval.

Looking now at the **DEVELOPMENT** element of the framework, development of strategic decisions is strongly supported by problem solving arrangements that **target** through precise problem definition, **trial** activities including potential approaches to the problem and **validate** assumptions with stakeholders as to the nature of the problem and the efficacy of the approach. Such activities require access to the range of data and other information required to ensure that problems are precisely identified before embarking on a search for approaches that address the problem. In the instance of quad bikes, it was identified that sixty-two of the fatalities occurred on a farm or property; eleven occurred despite wearing helmets; eight fatalities were children under ten years of age and over a third of fatalities were adults over sixty years of age. This data defines the problem more precisely, and indicates that traditional information dissemination and compliance follow up activities would not be sufficient approaches to the problem.

Whilst data and research firstly identifies the potential problem, this is then taken to the regulated community through various formal and informal stakeholder engagement mechanisms for further review, amendment and ratification, and includes them in the development and delivery of **tailored approaches**. In this example, a working group of various stakeholders form a quad bike industry strategy to examine the problem and come up with approaches that address the specifics of the problem. Stakeholders include manufacturers and importers; unions, bodies representing farmers; state roads regulator; training providers and representatives from other work health and safety regulators.

Internal stakeholders such as other parts of the organisation and field based operatives are also included in this validation process. Regulatory agencies have regional offices and from these locations are able to form close links with local stakeholders, that in this example includes stakeholders such as local rural groups, distributors, training providers. To ensure that those approaches to problems are **fit for purpose** and reflect a **client focus**, the **choice of tools** in tailoring such approaches is not confined to the regulators' toolbox, but incorporates open ended processes to ensure that they are tailored to the problem. From the Safe Work Australia website, the working group identified a number of approaches including point of sale material to guide farmers; mandatory requirement to wear a helmet; incentives for farmers to fit safety devices to protect riders in the event of a rollover; a nationally recognised rider training course designed specifically for farmers and the need to comply with manufacturers' guidelines in relation to passenger-carrying, load requirements and rider age. These approaches developed and deployed from the strategic decision-making process are also **ratified** as part of the monitoring the process, as depicted by the arrow back to the **DESIGNATION** element. This review process confirms the problem as well as the efficacy of the proposed solution, including ensuring that approaches to problems reflect **responsiveness** and **relevance**.

Public sector customer **service** and **performance** expectations of regulatory agencies frame the **DEPLOYMENT** of the strategic decision. A **client focus** can be maintained by engaging stakeholders throughout the process from corporate planning, through to the designation of the strategic decision and the development, and finally to the deployment. In a regulatory environment, client service considerations are framed around principles of transparency and engagement mechanisms that facilitate input to strategic decisions. Additionally, **legitimacy** is conferred on the strategic decision by involving stakeholders in this manner that enables acceptance by them and provides credibility to the regulatory agency and the decision-making process. Similarly, but importantly, **transparency** derives from this engagement as all participants as well as external parties have access to information that promotes a shared understanding of the details of the strategic decision, including the rationale based on evidence.

Accountability is derived from being authentic in engagements and being clear about expectations regarding actions and outcomes of strategic decisions. Additionally, **performance** expectations can be managed by framing reports that include not only outputs such as activity measures expected by central agencies, but also around outcomes such as risk reductions, behavioural changes or other indicators consistent with the identification of the problem and the development of the solution. These performance criteria address the standard approach to reporting outputs such as actions taken or resources applied, as well as reporting on more nuanced outcomes such as behavioural change.