

**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.

**Signed**\_\_\_\_\_

## **ACKNOWLEDGEMENTS**

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.

<b>Term</b>	<b>Meaning</b>
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