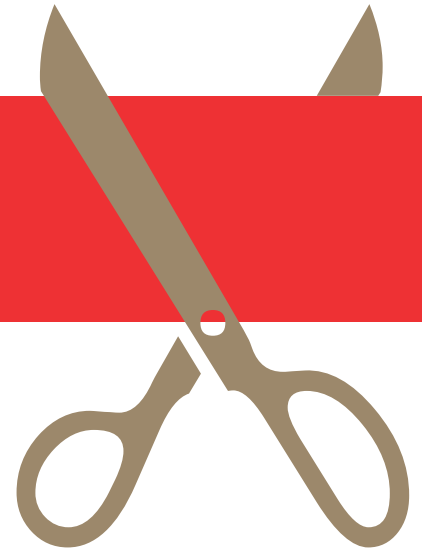




Office of Deregulation – (Revised) Guidance Note



REGULATORY IMPACTS FROM NON-COMPLIANCE AND FROM THE ADMINISTRATION OF COURTS AND TRIBUNALS

As at 22 September 2014

The Government has agreed that the Regulatory Burden Measurement (RBM) framework be used to quantify the regulatory impact of new and existing regulation to business, community organisations and individuals. The Government has also agreed that some regulatory impacts be excluded from measurement in the RBM framework.

What are non-compliance costs?

Non-compliance costs are costs which result from a failure to comply with regulation. These costs are not considered to be part of the regulatory burden for the purposes of the RBM. This includes penalties and associated activities that are required to be undertaken as a result of non-compliance with a regulation.

For example: Individuals are required to submit a form each month. The submission of the form is existing regulation with a regulatory impact (compliance costs). If an individual does not submit the required forms for a period the responsible regulator can impose a civil penalty or bring criminal proceedings (non-compliance costs).

There is no distinction between criminal and civil penalties for the purposes of the RBM framework.

What regulatory impacts related to non-compliance are included in the RBM framework?

Regulatory impacts that arise, up to the point that action is taken to respond to the suspicion of a specific instance of non-compliance, are included in the RBM framework. This includes risk based frameworks that may target certain populations without a specific instance of suspicion.

For example: Where the responsible agency randomly audits selected individuals to confirm compliance with the monthly form submission requirement, the costs to each individual of supplying information for that audit would be included in the RBM framework.

Which regulatory impacts related to non-compliance are excluded from the RBM framework?

Regulatory impacts that occur both during and after a suspicion of non-compliance are excluded from the RBM framework. This includes the compliance costs associated with any investigation and subsequent enforcement processes.

For example: Where the responsible agency identifies possible anomalies in an individual's compliance with the monthly form submission requirement, the agency may form a suspicion of non-compliance. Alternatively, the random audit referred to above may identify anomalies, which lead to the formation of a suspicion of non-compliance. Once the suspicion of non-compliance is formed, the regulatory impact is excluded from the RBM framework.

Are non-compliance costs measured in the RBM framework?

No. Non-compliance costs are not considered a regulatory burden. They are avoidable costs caused by deviant behaviour. Non-compliance costs are therefore excluded from the RBM framework.

Are proposals for new criminal or civil offences or amendments to existing offences excluded from the RBM framework?

No. Proposals to create new offences or amend existing offences may have a regulatory impact and must be measured in the RBM framework. These proposals are subject to the usual costing and Regulation Impact Statement (RIS) processes. This assists decision makers to assess the compliance burden of such proposals.

For example: Where a new offence is created or amended and a previously acceptable behaviour (possession of a particular article) is now prohibited, costs associated with complying with the new provisions (disposing of the article, obtaining a license or waiver) to avoid committing the offence would be included in the RBM framework.

Are proposals to add to or change the administration of courts and tribunals excluded from the RBM framework?

Changes to the administration and processes of courts and tribunals made by courts or tribunals are not subject to the RBM framework. This includes rules, practice directions, and other decisions made by courts and tribunals about their operations.

Changes to courts and tribunal processes made by the executive or legislative arms of government may have a regulatory impact and must be measured in the RBM framework.

For example: If a court prescribed that an application had to be in a certain form, this would not be captured by the RBM framework, but where a change in process was prescribed by legislation this would be captured by the RBM framework.

Examples of excluded impacts

1. the investigation of suspected non-compliance, including:
 - the cost of obtaining legal advice and retaining a lawyer;
 - requirements to produce material or undertake certain actions like producing company reports or access to property in response to a search warrant; or
 - proceeds of crime and related action.
2. the collection of intelligence and dealing with persons of national security concern;
3. processes prescribed by courts, tribunals and any other independent body established to settle a dispute, such as:
 - a witness appearing before or preparing to appear before proceedings;
 - legal costs associated with trials, hearings, administrative appeals and processes, and reviews;
 - responding to court or tribunal requirements; and
 - submitting related forms and legal applications.
4. the administration of federal offenders.