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**Responsive regulatory learning: the role of third party participants
in building compliance and enforcement capability.**

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1. INTRODUCTION

This paper examines the role of third party auditors and their contribution to the learning process within responsive regulatory programs. The analysis draws on a qualitative study that investigates the experiences and understandings of auditors, firms and regulators involved in a voluntary compliance program in the Australian trucking sector. The research suggests that auditors play an important role in regulatory learning, enhancing both the compliance capability of firms as well as enhancing the enforcement options for regulators. This study shows that regulatory learning is central to the development of responsive compliance programs. The findings raise questions for how regulatory systems might be structured to further enhance and consolidate regulatory learning as a strategic objective. What can regulatory agencies do to facilitate and strengthen this role within their compliance programs? As neoliberal influences and broader demands for austerity measures continue to restrain the involvement of the state in direct command regulation, is a focus on regulatory learning and the contribution that third party participants may make towards this process a cost effective option for building compliance capability across sectors?

This paper is structured into six parts. Following this introduction there is a brief review of the literature that examines the role of learning within regulatory systems and an explanation of audits as a regulatory tool since their contribution to learning in compliance programs is a central focus of this study. Part three details the research methodology and provides an overview of the regulatory program under analysis. Part four presents the qualitative findings and an analysis of the data. The discussion here aims to explore the acts of learning that are evident in the compliance program under review. Discussion then includes suggestions on what might be done to help improve compliance and regulatory practice by promoting learning. Part six presents the concluding remarks and brings the paper to a close.

2. LEARNING WITHIN REGULATORY SYSTEMS

The idea of policy programs, administrative systems and regulatory schemes learning from experience and observations of practice is not new (Kinder, 2012). The operational reality of most organisational systems is that feedback, reflection and formal processes of review and evaluation provide opportunities for learning and deeper understanding. Mistakes and blunders are often cited as key events where insight can be gained to learn how to do things better and new arrangements can be put in place to avoid future failure (Norros & Nuutinen, 2009). Intuitively, one expects that the acts of management and regulatory leadership will involve some level of learning that seeks to build more efficient, effective and compliant services. Nevertheless, experience demonstrates that the extent and depth of learning that occurs within organizations, amongst staff and across programs is variable and hence more formal processes are instituted to harness the advantages of learning and reflection (Seth, Kessler, Horton, & Gottlieb, 2012). This includes formalised systems of knowledge management, training, processes of review and audit, and purposely designed evaluation studies that seek to go deeper and provide a more comprehensive analysis of impact, value and unintended outcomes. Much of this purposeful work is

designed to obtain and analyse a body of information that goes beyond the administrative and information reaches of individual managers. In this way the learning process moves beyond the constraints of one individual's insights to a more formalised, systematic and expert analysis of organisational practices and what was achieved.

Modern management practices and formal accountability requirements mean that regulatory systems, programs and schemes are subject to both formal and informal processes of learning and review (Gupta & Misra, 2002). Much of this occurs on a daily basis as requirements are put into place, rules considered, interpreted and enforced. Participants work out how to best manage relationships, navigate systems and learn how to play the game (Coen, 2005). In their work on regulatory learning Gupta and Misra observe that while it is assumed general learning occurs through the rectification of mistakes more specific learning actually occurs where regulators are actively engaged with firms providing "excessive assistance" (2002:652). This work highlights how the aspect of engagement is central to the exchange of information and the transfer of knowledge within a regulatory context. Engagement and dialogue are considered essential in the development of responsive regulatory practice (Black, 1997). The practice of dialogue helps build an understanding between regulators and regulatees about what is actually going on and this enables learning to occur around the compliance expectations of the state and how industry might meet these obligations (Parker, 2002).

The question this paper considers is how evident and purposeful are formal systems of learning in the design of regulatory programs and does the evidence suggest opportunities for improvement? What this paper seeks to differentiate here is the difference between, what might be termed, "*on the job learning*" which tends to suggest an understanding that "*we get better at it as we become more experienced with the regulatory requirements*" to something that is more purposeful and specific to the design of regulatory programs. This means that learning is seen as a specific regulatory objective and this function is then designed into the regulatory scheme. In these instances regulatory structures and incentives purposely draw in the act of learning so that it contributes towards the attainment of higher levels of regulatory compliance. Learning is also drawn on to ensure regulatory rules and requirements are adjusted in response to knowledge acquired by regulators about industry practice and the ever-changing environmental context.

Self-regulation and regulatory learning

This study is centred on a voluntary compliance program and hence is concerned with learning within the context of models of self-regulation. In her work on effective self-regulation Parker (2002) defines the concept of double loop and triple loop regulatory learning. This occurs within a broader framework of meta-regulation where the state enforces a process of regulation and monitoring of approaches to self-regulation. In her analysis of compliance programs Parker argues that effective systems of self-regulation involve a process of self-evaluation and learning. Companies learn how to improve their compliance practices through performance and failure (double-loop learning) and regulators who use this information to improve the law and support better self-regulation through more strategic inspection and enforcement engage in

triple-loop learning (Parker, 2002:277). Learning takes place in two arenas, the firm and the regulator and this process occurs where there exists greater engagement between the parties. Closer engagement also supports greater transparency in the reporting and accounting of self-regulatory activity. Learning in this regulatory context shifts attention towards taking action, resolving matters, correcting non-compliance and strengthening the capacity to remain compliant into the future.

Gilad (2010) analyses a broad body of regulatory practice that she refers to as “process-oriented regulation” to determine how these models contribute to regulatory learning and building regulatory capacity. The term process-oriented regulation is used to cover the expanding range of regulatory approaches that make greater use of self-regulation and includes enforced self-regulation, management-based regulation, principles-based regulation and meta-regulation (Gilad, 2010:486). These models of regulation have emerged in response to the growing complexity of industry as well as businesses general preference for less prescription and greater autonomy in tailoring compliance programs to their own individual circumstances (Regulation Taskforce, 2006; Tombs & Whyte, 2010; Vickers, 2008). Gilad’s analysis confirms Parker’s (2002) claim that meta-regulation is high in regulatory learning and capacity building (Gilad, 2010:494). Gilad notes that meta-regulation expressly demands that firms self-evaluate, adjust their practices where required and report this change to regulators. Regulators then actively disseminate this knowledge across the sector to help lift regulatory compliance standards.

Audits, engagement and learning

While current trends in regulatory practice reveal an increasing reliance on process-orientated models of regulation that draw on self-regulation, demands for accountability and assurances that public policy objectives are being pursued still remain. In this environment audits have emerged as a key accountability tool that allow organisations to report on practice, systems of operation and methods of control without requiring the state to step in and undertake their own inspection and assessment (Hutter, 2006). Audits are common elements of regulatory programs that reflect New Public Management ideals of autonomy, delegation and less direct involvement from the state (Blundell & Robinson, 2000). Audits enable the state to make judgments about the activity of others from a distance and this has allowed autonomous units to become more governable (Vincent-Jones, 2002:45). The growing preference for accountability and reporting through audits has led to what Power (1997) refers to as an ‘audit explosion’ where government institutions, private firms and professions have all become involved in accounting for their actions through audits.

Audit is attractive as an evaluative tool because of its perceived objectivity. Audits are seen as a way to inculcate monitoring and control systems into the management processes of firms and at the same time deliver information that demonstrates levels of compliance to externally imposed standards and requirements (Moran, 2001:27). Where problems are detected it is expected that audits would contribute to an ongoing process of improvement (Parker, 2003:227), hence their suitability to compliance and self-regulatory based programs.

Power (2003) argues that the ability of audits to check the existence of internal management control systems simplifies the monitoring of complex operational systems. Rather than assessing and measuring individual outputs, outcomes and actual performance in the field, the assessment process reviews the rigor of control systems over the production process. However, this shift in regulatory attention away from actual output and performance is also a criticism of audits. (Power, 1997:85). Regulatory programs that rely on audits run the risk of monitoring systems rather than performance. Critics argue that audits are seen as backward looking rather than anticipatory and auditors are "...seldom qualified to employ more anticipatory tools such as on-site inspections" (Hutter, 2006:14). Site inspections bring with them the option of enforcement and can escalate from warnings to the imposition of penalties, whilst audits lack these supplementary strategies. Parker notes that audits rarely stimulate escalation of enforcement (2003:225) and their focus on management systems under corporate compliance programs is often at the expense of harms done (Courville, Parker, & Watchirs, 2003:181). This indicates that to be effective audits need to be linked with other regulatory instruments and practices so that their findings can contribute to broader compliance and enforcement strategies (Gunningham & Grabosky, 1998).

Promoting improvements

In many sectors the introduction of process-oriented regulation has meant independent third parties such as auditors, are brought into the regulatory assessment process (Doern, 2003; Gunningham & Grabosky, 1998; Hutter, 2006). These new participants add to the complexity of regulatory systems but also play a role in shaping a firm's standing within the regulatory field. Auditors interpret regulatory standards and make judgments on a firm's ability to meet such standards. They often play a mediating role translating and explaining regulatory requirements and demands on firms and also communicating to the regulator a firm's willingness and ability to comply. King observes that as intermediaries auditors "...play important roles in adopting, modifying and amending external regulatory processes in the light of local organizational strategies and long standing professional and peer perspectives and traditions. Without this 'greasing of the wheels' by such groups it is likely that external quality regulation would be both less normatively acceptable and less effective" (2007:213). How these issues are observed in respect of the role of auditors working in the Australian trucking sector is a specific focus of this paper.

A key challenge for regulators is to determine whether audits are about finding problems, blaming and punishing, or identifying problems and then engaging in a process of learning and compliance improvement with the firm. In the responsive regulatory environment learning orientated audits support firms, helping them develop compliance skills until more persistent evidence emerges of non-compliance where enforcement is then escalated and a 'blaming' orientated audit is instituted to sanction the firm (Power, 2003:196).

This paper is particularly interested in the activities of auditors and the role audits play in contributing to the learning processes of firms as they engage in the tasks of self-assessment and self-evaluation. The interest here is on how regulatory programs might then more purposefully draw on the role of third party auditors to accelerate and formalise the learning function within compliance programs. The next section

explains the research methodology and this is followed by background information on the voluntary compliance program that is the subject of this study.

3. METHODOLOGY

This paper draws on a body of evidence taken from a larger qualitative study that examined industry and regulator experience of voluntary compliance in the Australian trucking sector. This study involved semi-structured interviews with 42 participants representing auditors (5), regulators (18), industry associations (13) and truck operators (12). These participants were drawn from across six Australian jurisdictions and were all involved in the national compliance program.

A qualitative approach was selected because it enables the researcher to ask about people's perceptions and understandings of policy and their experience of policy and regulation in different settings. Qualitative research methods enable a small number of interviews to provide information rich data and this can facilitate a deeper insight into less quantifiable matters such as the political aspects of relations and the attitudes of individuals and organisations to regulatory requirements (Bernard & Ryan, 2010). This helps build an insight into working relationships and how this might shape decisions and actions around compliance and enforcement. In this study aspects of regulatory learning are more likely to emerge from reflection and consideration rather than quantitative measures of firm performance. As King (2007:209) has observed, regulatory governance may be best studied using more inductive and grounded methodologies. Limiting the research method to quantitative data would not produce the depth and detail required to analyse the complexity of the social phenomena that is the subject of this paper (Holiday, 2002). It is recognized however, that obtaining quantitative data that tracked the compliance records of firms over time would strengthen the analysis of how learning contributes to improvements in compliance performance. This is a noted limitation of this study. Before moving to a discussion of the evidence a brief outline of the trucking compliance scheme follows.

The National Heavy Vehicle Accreditation Scheme

The National Heavy Vehicle Accreditation Scheme (NHVAS) is a voluntary compliance program that aims to reduce reliance on prescriptive regulation and make greater use of self-regulation in the safety areas of vehicle loading, vehicle maintenance and driver fatigue (driving hours). The scheme offers a higher range of standards in these compliance areas as alternatives to the existing prescriptive regime. Firms that chose to opt into this scheme (selecting one or more of the compliance modules) are obliged to have their internal control systems assessed by an independent auditor. Once management control systems are assessed and daily performance verified as meeting scheme standards the regulator is advised and the truck operator is then rewarded with access to relaxed regulatory limits and subject to less road-side enforcement. The rewards, such as access to higher axle weight limits and a wave through at checking stations, are provided to help firms offset the cost of meeting higher compliance standards and to also attract firms into the scheme. Regulators consider these rewards important since in sectors dominated by small firms like trucking, costs are known to be a significant factor in influencing a firm's willingness to comply (Thornton, Kagan, & Gunningham, 2008).

The NHVAS operates across all Australian states and territories and around three percent of the trucking fleets are enrolled in the scheme. This represents around 2,800 operators and this predominantly consists of larger fleets (Baas, 2008). In contrast to Europe and North America, Australia does not regulate industry access and standards through licensing. Prescriptive regulation, active enforcement and voluntary programs remain the primary mechanisms for raising compliance standards in the Australian trucking sector.

Auditors are recognised as central players in maintaining the quality and standards of the scheme. NHVAS auditors must be certified by the training certification body American Registrar Accreditation Board and the Quality Society of Australasia (RABQSA) that is contracted by transport regulatory agencies as the preferred certifying body. This private certification body maintains a list of eligible NHVAS auditors, provides ongoing training and investigates complaints into poor performing auditors.

The following section introduces the empirical evidence. Discussion first examines the emergence of dialogue around regulation and compliance requirements that has come about with the introduction of NHVAS. Dialogue and engagement are seen as important first steps before more evident regulatory learning can be observed.

4. RESULTS: ENGAGEMENT, DIALOGUE AND REGULATORY LEARNING

One of the notable features of compliance programs is the general shift they represent away from strict, hard and fast enforcement around prescriptive rules towards an approach based on engagement and dialogue. Regulation and enforcement in the Australian trucking sector is predominantly centred around prescriptive limits and historically has been antagonistic in character (McIntyre & Moore, 2002). What has been most notable since the introduction of NHVAS in 1999 is the evident shift in the nature of industry-regulator engagement. As one regulator noted:

...enforcement, by its nature almost has to be antagonistic. The audit-based approach and the systematic approach, I think provide a much better basis for productive discussion. (Regulator 07)

Under compliance programs like the NHVAS this process of ‘*productive discussion*’ allows regulatory requirements to be explained, understood and in some instance negotiated. Communicative interactions between regulators and industry are important features of the NHVAS that contribute to increased operator understanding of their regulatory obligations as well as increased regulator understanding of how they can act to adjust regulatory requirements to influence compliance. An important aspect of this interaction involves explanation and education and the following regulator reveals how they take this approach to help ensure operators understand their compliance obligations.

Now it's a case of being well informed as to what standards they are required to achieve in relation to NHVAS maintenance. We take on a role where we do educate rather than go straight out and penalise. But at the end of the day we

are in a regulatory field, so when we start to impose penalties they can't come up and say I didn't know. (Regulator 18)

The above quote reveals a responsive regulatory approach that first involves consultative engagement and a willingness to educate that would then only need to escalate to more punitive action if compliant behaviour is not forthcoming.

Regulators observed that under the NHVAS dialogue with industry involves sharing information and building direct relationships with key people in firms:

You have your compliance transport inspectors linking up with the accreditation managers. ... I look at those people as he's my counterpart in the firm. (Regulator 15)

One regulator pointed out that this was important because it gave them "...a foot in the door. So you can go in and see these people and have words with the guys occasionally" (Regulator 04) and another pointed out that the NHVAS showed how they "...can operate in a partnership" (Regulator 15).

Here we see the NHVAS giving the regulator access to knowledge, resources and information from within the firm. Direct lines of communication are established between the firm and the regulator around issues of compliance and this helps to clarify understandings about regulatory requirements, minimise firm resistance to meeting these requirements, and build a shared understanding and commitment to the policy objectives of the state. It also provides regulators with feedback and enables reflection and review of current regulatory requirements.

Establishing counterparts in firms, sharing information and engaging in partnerships is evidence of regulatory conversations (Black, 2002). Black suggests communicative interactions amongst all participants are an important part of regulatory systems. These conversations build an understanding of what constitutes compliance problems and helps identify acceptable and appropriate solutions (Black, 2002:165). The following truck operator noted how the level of engagement and sharing of information has significantly changed under the NHVAS.

When they start to go down that hard line it starts to make people go, well, now I don't really want to share information with you. I'm going to get in trouble if I do because they just take a black and white view. They're not trying to work with us. So you're not sharing that information as much to actually have everyone else learn. But oh yeah, with NHVAS this is. We've worked together to figure out a better way to do it. (Operator 01B)

The above quote illustrates how regulatory dialogue is particularly effective in promoting learning. Here the trucking operator makes a direct link between engagement with regulators and the act of sharing information and learning. What has also been observed in this study is that auditors are also important participants in this regulatory conversation since, in many instances, they are the main party clarifying compliance requirements for truck operators. The question this paper seeks to explore is how far third party participants might move regulatory conversations from

engagement to a more formal process centred on learning, sharing knowledge and compliance improvement.

Commitment to better standards

Under the NHVAS auditors carry out a gate keeping function that has significant influence on the regulatory experience of participating firms. Regulators argued that auditors were pivotal to the success of the NHVAS, and the manner in which they conducted audits, applied rules and made determinations was central to the integrity of the scheme. As one commented:

The whole integrity is based on the audit report and the capability of the auditor. They're critical to the system. (Regulator 16)

Other regulators pointed out how reliant they are on “...*how competent, or how stringent, or how consistent those rules are applied by the auditor*” (Regulator 11) because, “...*they're the ones at the end of the day that tell the regulator whether the operator complies or not*” (Regulator 12).

Auditors also recognise that their performance influences how effectively the NHVAS standards are going to be applied by operators. Some suggest that a critical weakness of the scheme was “...*that the standard of some of the auditors is not as good as it could be*” (Auditor 04). Industry associations also highlighted the critical importance of auditing standards noting that currently “...*auditing processes in NHVAS are not necessarily at the level we might want them to be...*” (Industry Association 08).

Concern about the expertise of auditors and the rigour of the system that permits firms to operate under NHVAS partially represents a call for stronger regulation and enforcement to help retain an exclusive market. It also represents a desire to more effectively constitute the regulatory framework under the NHVAS. Rigorous assessment and enforcement of standards is seen to be an effective way in achieving improvements in compliance and safety outcomes. It also closes another avenue through which unscrupulous operators seek to obtain an unfair competitive advantage by gaming the scheme to access the regulatory concessions. Given the important function auditors play in this compliance scheme, it is appropriate to inquire how they might act to further enhance operator learning about their compliance obligations.

The intermediation of auditors

Under the NHVAS, auditors find themselves working for both public and private organisations. Auditors work for private firms in undertaking their entry audits and required annual reviews as well as for the public regulator in conducting triggered audits of trucking firms suspected of failing to maintain adequate compliance systems. Auditors are generally perceived as independent by truck operators and regulators and this helps make their inspection role more effective. The auditors independent status means their relations with industry and individual operators is likely to be less adversarial than inspectors from enforcement agencies (Hutter, 2006) as the following industry association representative explains.

When an auditor goes out to visit an operator, if he is not a government employee then I think that the operator is going to give him a better reception.

A bit more honest, more open and more understanding. I think that usually if you have a public servant to come and talk about things, then sort of, like well, you know ...the operator will be more willing to learn and take advice if it isn't a government employee. (Industry Association 07)

These comments reflect what King calls 'regulatory intermediation' (2007:160). This is a process where external regulatory authority is distributed and modified by auditors who work at the interface of the regulator and those being regulated (King, 2007:213). The active intermediation of third party auditors is also seen to open up the learning process that forms an important component of compliance programs. Auditors help transpose regulatory obligations into the daily business practice of truck operators and also provide feedback on compliance issues to regulators. The way in which this occurs is illustrated by the following example of inspection practices associated with triggered audits.

A triggered audit occurs where enforcement evidence emerges that suggests a firm may not be fully compliant with scheme standards. When undertaking a triggered audit for the regulator, the auditor is provided with additional compliance information held by the regulator and becomes an agent more aligned to the interests of the state. This information is provided to ensure the auditor understands the concerns that have triggered the regulator's interest in the firm and to assist the auditor in conducting a targeted investigation. In this process the auditor represents a middleman mediating the concerns of the state regulator with the private firm. The strategic value auditors place on this exchange of information is revealed in the following interview dialogue.

Auditor 03:now what happens in NSW at least, before you can go and do a compliance audit you are requested to contact the RTA [regulator] and I did some yesterday, and they provide you with basic intelligence of any interceptions they've had of that particular operator before you go in and do your audit. What we're looking for then is evidence that the operator has recorded the non-conformance and taken corrective action within their own management system.

Interviewer: So is that a way of strengthening your role?

Auditor 03: Oh, I believe so

Often, even outside the practice of a triggered audit, the regulator will provide the auditor with specific information to assist in the conduct and focus of the audit. This reveals the extent of regulatory dialogue that occurs between parties (auditors and regulators) to strengthen the effectiveness of the NHVAS and progress the compliance objectives of the state. The following regulator explains his reasons for working closer with auditors.

It is difficult for them to walk into a business cold and do the standard checks. What we started doing here a few months ago was providing our enforcement information to auditors prior to them going in to audit an operator. It was basic information. ...in the past 12 months, this is their enforcement record; they had been 3 or 4 tonnes overloaded on these occasions, have been found off

route on such and such occasions etc. That sort of information. And it enables the auditor to go straight to that and say, "Give us a look at your corrective actions. What did you do? OK, your driver went off route on these occasions. When you found out about it, what did you do about it? Did you retrain your drivers, did you put this in place? Did you change anything or just maintain your systems? Did you find out how it happened?" Now they are able to go in and have a bit more of a targeted look at what operators are doing. (Regulator 09)

This evidence suggests that the dialogue that occurs between regulators and auditors enables the audit to become more focused on the corrective action and internal review practices that firms put in place to ensure compliance. This shows the regulator working with third parties (auditors) to help progress the policy goals of the state in a responsive manner by building ongoing compliance rather than emphasising detection and punishment. This strengthens the role of the audit as a compliance tool and helps shift the focus of the audit towards corrective action and the learning associated with this process.

This sharing of intelligence information links the auditor more intimately into the state's regulatory and enforcement process. As Power observes, the auditor becomes "...linked to the state in a hierarchy of control" (1997:33). This practice illustrates the observations by a number of scholars (Hutter, 2006; Power, 1997; Vincent-Jones, 2002) on the way regulators work from a distance using the audit process to influence the internal control mechanisms firms put in place to meet compliance requirements. The state is able to extend its influence by linking in with private players, influencing private resources by orientating their interest towards the regulator's compliance objectives. This is achieved through a process of dialogue and engagement that draws on trust and seeks to build a better understanding of how regulatory systems can work more effectively. Here we see evidence of Parker's (2002) triple loop learning where regulators are engaged with auditors in an effort to improve the operational aspects of the NHVAS to strengthen its compliance impact.

Knowledge transfer and industry learning

Auditors interviewed for this project shared a concern in the road safety policy goals of the regulator and emphasised their interest in working with firms taking a supportive, learning-oriented approach towards audits. One auditor argued that the level of business acumen, professionalism and general capacity to understand regulatory requirements is quite constrained in the Australian heavy vehicle industry. This means auditors often find themselves modifying, assisting and interpreting regulations to achieve positive compliance outcomes for operators. This is reflected in the following comment:

Well you need to understand the people within the industry; particularly you know we're talking about the small operator. They're my bread and butter customers and they're hard working honest diligent people ... and these people that are hurting because of the economic downturn in the bush¹. And they might have drivers that work for them who are illiterate. People who have poor

¹ Colloquial term meaning rural area.

numeracy ... With these small people in the bush you really have to help them through these processes. My attitude is if I find a non-conformance and I can explain to the person why they've got this non-conformance and get them to understand how to take improvement action, particularly with this driver that can't read or write or whatever. I think the outcome from that is far better than just writing up a non-conformance and walking away and saying, "Well, you fix it". (Auditor 03)

This comment reveals how auditors play a nurturing role and are supportive of learning. It is not uncommon for audits to be viewed as a learning exercise where knowledge is transferred amongst industry participants with the aim of improving compliance standards. Auditors are exposed to a broad range of industry responses to compliance problems and this information is not generally accessible to 'your average truck operator'. Sharing information on how different operators respond to different compliance problems assists in lifting the compliance standards of the industry. As one auditor noted, "...the innovative operator will use accreditation to the best of his capability to get the best out of it" (Auditor 02) and this observation then becomes useful information to share with other firms. Here we see auditors facilitating the objectives of the state by actively promoting and distributing information across the industry to raise compliance practice. This is particularly pertinent in an industry that is dominated by small and medium sized firms that have limited internal resources to draw on when developing their own compliance systems.

Auditors become a link between the double loop learning that occurs within firms and the triple loop learning that regulators would normally undertake in acquiring and distributing information to improve compliance across the sector. In fact, drawing on the broad base of auditor knowledge of industry practice deepens the opportunities for regulatory learning. Auditors have ideas on how regulatory programs can be improved. They understand what factors are important in motivating firm behaviour and how some firms stretch to reach compliance standards. This intimate insight into the thinking and business practice of firms is something that is not so readily accessible to regulators and their inspectors. Auditors are able to articulate and advise regulators on factors that influence a firm's compliance behaviour and attitude towards regulation. They observe weaknesses in regulatory design, implementation and the opportunities that firms take to exploit compliance processes and enforcement practices. Auditors also observe the supplementary benefits of compliance programs, many of which may not have been anticipated by regulators.

It is also recognised that auditor attitude and commitment to compliance and safety is likely to vary across the industry and therefore contributions to learning and improvement may vary. Comments from a number of participants in this study have already been cited that suggest the standard of NHVAS auditors needs to improve. Nevertheless, the learning approach evident in the NHVAS does draw in a broader base of experience and insight to extend and challenge existing practices. The evidence presented above highlights the educative role some auditors play in the ongoing development of the NHVAS. This illustrates both the opportunities and resources that can be drawn on to strengthen the compliance and safety outcomes of the scheme. How this might be achieved is discussed briefly in the following section before drawing this paper to a conclusion.

5. DESIGNING MECHANISMS FOR LEARNING

Auditors interviewed for this study understand the role of government, the pressure they face to achieve efficiencies and how this then translates into innovative regulatory practice. They have an insight into the governing structures that shape regulation. As one auditor noted:

They are winding back on a lot of their traditional regulatory and inspection roles, moving to the self-regulation model...it is part of that economic rationalisation process that results in self-regulation...There is an incentive for government to take that approach (Auditor 02)

Auditors see a bigger picture and also a broader range of factors that influence compliance. They understand the inter-relationships in a chain of engagement that influence compliance in the trucking sector and this gives them an insight into how compliance problems across the industry might be addressed. This insight puts them in a stronger position to mediate and explain regulatory practice and rules between firms and regulators. Here we see how auditors may act to enhance triple loop learning by exchanging information with regulators to sharpen the focus of regulatory programs and more strategically push compliance goals with firms.

Under general compliance programs auditors are required to assess against standards and protocols endorsed by the regulator. Regulators however, can be more proactive in providing information to auditors that directs their attention to the role of learning in the audit, compliance and enforcement process. This may include providing supplementary information to auditors on how lead firms meet specific compliance demands and holding briefing and engagement days with auditors to explain new regulatory requirements and emerging priorities.

Regulators can also structure more formal processes for feedback into their industry engagement strategies. For example, this may include a reference panel of experienced auditors. Panel members can then be called upon to provide industry intelligence to regulators about trends in industry practice, identify problematic areas of regulatory compliance and recommend revisions and amendments to regulations and process requirements. The information brought in through formal representative structures can also be supplemented with periodic surveys of auditor understandings of industry experience with compliance programs. This might include the identification of key challenges but also the nomination of firms seen to be leading innovation in compliance practice. Actively pursuing alternative sources of information will help regulators learn more about the operation of regulatory compliance programs beyond that gained from enforcement intelligence. The identification of exemplar practices can then be formally documented and disseminated widely across the sector to publicise the innovation that lead firms undertake in meeting compliance requirements. As well as informing others, this approach challenges the existing practices of regulatees and increases the pressure for improvement from regulators and stakeholder as they learn more about the achievement of other organizations (Gilad, 2010:500).

Opportunities exist for strategic initiatives that draw on industry resources to compliment and support a more efficient use of command-and-control effort. This could involve making use of auditors to promote and support specific compliance campaigns, for example, a three-month compliance campaign targeting truck-loading practices. Regulators can provide information to auditors on their key concerns in this area and provide additional resources that auditors can discuss and give to their clients, such as brochures and guides that detail various loading techniques. The actions of auditors could be complemented with a similar enforcement campaign carried out by roadside inspection staff. This coordinated approach ensures external pressure is applied to give greater force to the compliance and educative efforts of auditors. Gilad notes that a "...learning-based approach to regulation cannot replace enforcement and external pressure" (Gilad, 2010:500). This strategic approach combines the two. It draws on the compliance effort of both state and non-state actors and can help lift and sustain improvements in industry standards in a more cost effective manner.

6. CONCLUSION

State agencies operating in an age of austerity must increasingly consider how other parties might contribute to their policy and compliance goals. As regulatory systems become more devolved and hybrid models of process-oriented regulation expand, the important role third parties play in not only reporting but also developing the compliance skills of firms will expand. Regulators stand to make significant gains where they can incentivise learning into the formal interactions of organisations under compliance programs. Research already identifies learning taking place within compliance programs the key challenge is to design systems that explicitly bring this action to the fore and account for learning as an identified regulatory objective. Evidence from practice suggests this is realistic and achievable and the next step in this project is to develop more robust systems for implementation.

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