



Australian Government

**Department of Infrastructure, Transport,
Regional Development and Local Government**



Office of Transport Security
Our Regulatory Philosophy

Purpose of this document

Our Regulatory Philosophy articulates the Office of Transport Security's (OTS's) approach to regulating preventive security in the transport sector. OTS's role is to provide expert advice and regulatory oversight for the Australian Government by taking a risk-based approach that continuously enhances security in Australia's transport system. We do this in consultation with industry and through international engagement.

The philosophy aligns the Australian Government and industry understanding of each others' security responsibilities. Articulating the philosophy should lead to improved efficiency and effectiveness of regulations. Accompanying the philosophy is a regulatory plan and design that translate these concepts into practical action.

The OTS approach to regulation is to ensure industry compliance with the law and regulations by effecting changes in industry participant behaviour towards their regulatory obligations. OTS uses a suite of tools to effect this change delivered through an enhanced OTS capability.

OTS is the primary advisor to the Australian Government on transport security policy and is the transport security regulator.

The philosophy describes OTS's regulatory role.

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The regulatory framework

OTS contributes to the achievement of Australian Government outcomes on transport security by influencing and effecting change within an international and domestic context.

INTERNATIONAL

Australia is signatory to international treaties. The International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO) influence the framework. Australia also leads and is guided by other international forums.

NATIONAL

The overriding Australian Government requirement is to provide a more safe and secure transport system. For OTS, security direction is embodied in the Aviation Transport Security Act 2004 (ATSA), in the Maritime Transport and Offshore Facilities Security Act 2003 (MTOFSA) and associated regulations. The legislation recognises that security is part of doing business in the transport sector.

The National Counter Terrorism Plan describes the role of all agencies involved in counter terrorism.

DEPARTMENT OF INFRASTRUCTURE, TRANSPORT, REGIONAL DEVELOPMENT AND LOCAL GOVERNMENT

The Department contributes to the wellbeing of all Australians by fostering an efficient, competitive, sustainable, safe and secure transport system and assisting regions to manage their own futures. (Source: DOTARS Annual Report 05 / 06)

OFFICE OF TRANSPORT SECURITY

OTS contributes to the wellbeing of all Australians by creating a transport system that is more secure against the threat of terrorism and unlawful acts. (Source: Portfolio Budget Statements)

OTS has an overarching security leadership and coordination role across the transport sector in carrying out its regulatory role.

- OTS plays a key role in ensuring the security of aviation, maritime, offshore oil and gas and air cargo activities (Source: Portfolio Budget Statements)
- States and Territories regulate the security of surface transport and dangerous goods. (Source: National Counter Terrorism Plan)

The shared transport security outcome

“A transport system that is more secure against the threat of terrorism and unlawful acts.”

Legislation is drafted to achieve this security outcome. When there are questions of application of the law, the outcome should guide those decisions.

Who is regulated?

OTS regulates participants in the aviation, maritime, cargo and offshore oil and gas industries.

OTS principles of regulation

These principles describe our aspirations as a regulator.

- Achieve a clear and shared transport security outcome with industry and governments within the context of the development and application of prescribed law, government policy and known and emerging threats.
- Build positive professional relationships through consultation with industry participants that encourages optimal preventive security outcomes and compliance with the law.
- Be fair, transparent, timely and consistent in the way we work with governments and industry.
- Decision making is consistent with the current and emerging transport security environment and its inherent threats, associated risks and vulnerabilities.
- Compliance responses are consistent and proportional to the level of security and regulatory risk ranging from assistance through to sanctions (a responsive regulation model).
- Engage with government agencies and industry to achieve coordinated approaches to transport security policy.
- Take into account the impacts of decisions on industry and their investment in transport security and on the public.
- Strive to influence the outcomes of international agendas and build capability in our region.

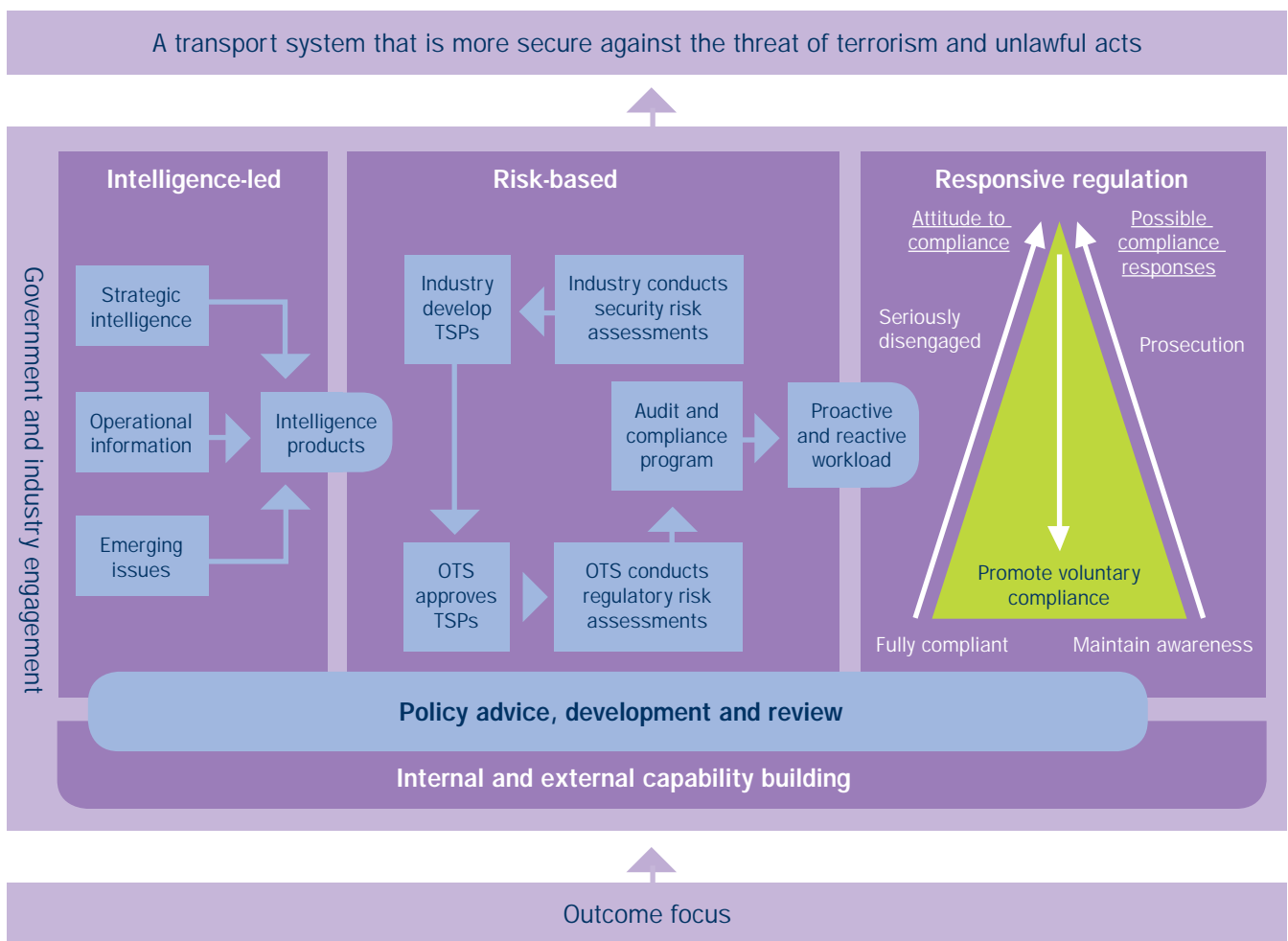
Principles in practice

Our functional and flexible regulatory system is led by quality intelligence that identifies key risk events, consequential vulnerabilities and develops proportionate and appropriate preventive security responses.

To implement these principles we have a clear understanding of the security risk environment and its implications for how we perform our role, including an agreed view of compliance responses and strong relationships between OTS and industry.

1) The OTS Business Model

The OTS Business Model describes how we perform our functions to achieve the OTS outcome.



2) The Regulatory Pyramid

The Regulatory Pyramid shows the potential compliance responses. These are based on industry participants' individual circumstances to achieve full voluntary compliance.



3) Relationship expectations

OTS undertakes to:

- Recognise the importance of, and the relationship with, industry;
- Engage industry in timely dialogue and consultation;
- Share the criteria on which we form judgments;
- Seek to understand industry;
- Be open about our processes;
- Continually learn from experience and provide timely feedback; and
- Recognise the commercial and legal frameworks that industry operates within.

Industry undertakes to:

- Recognise and support the requirement for a transport security regime;
- Promote a strong security culture through sound management practices;
- Be open to OTS's advice and guidance; and
- Identify and rectify deficiencies effectively in a timely way.

Conclusion

Through the application of Our Regulatory Philosophy, OTS and industry will work together towards the shared transport security outcome. This philosophy will lead to increased efficiency and effectiveness of regulation. Industry and the public will be confident in OTS as a credible regulator.

Glossary

Term	Definition
Compliance	Compliance by industry is conforming with the law and associated regulations. Strategies by OTS to achieve industry compliance range from education and assistance through to sanctions.
Consequence	The outcome of an event expressed qualitatively or quantitatively, being a loss, injury, disadvantage or gain. There may be a range of possible outcomes associated with an event.
Industry participants	<p>Those regulated by OTS include:</p> <ul style="list-style-type: none"> • Security controlled airport operators • Prescribed air services including general aviation aircraft operators • Screened air services • Airservices Australia • Those who deal in the supply chain including Regulated Air Cargo Agents and Accredited Air Cargo Agents (with effect 2008 with a 2 year transitional period) • Security regulated port operators • Security regulated port facility operators • Security regulated port service providers • Security regulated foreign ships • Security regulated Australian ships • Security regulated offshore oil and gas facilities • Security regulated offshore service providers
Intelligence	Assessed and evaluated information from open and classified sources.
Likelihood	Used as a general description of chance, probability or frequency of an event occurring. (Noting that the realisation of a security threat is not chance event, it is a calculated attack, probably without warning).
Responsive regulation	Responsive regulation is an approach that varies the compliance response depending on the industry participant's individual circumstances. Circumstances that are considered include the participant's compliance history, their mode, their location, economic factors etc. The aim of the compliance response is to return the participant to full voluntary compliance. The response is therefore proportional to the security and regulatory risks. It is also consistent for the same type of participant in the same circumstance.

Compliance	Compliance by industry is conforming with the law and associated regulations. Strategies by OTS to achieve industry compliance range from education and assistance through to sanctions.
Risk	The chance of something happening that will have an impact upon objectives. It is measured in terms of threats, consequence and likelihood. OTS considers three types of risk. Security risks are those that can give rise to an act of unlawful interference. Regulatory risks are those concerned with the development, application and compliance of the law. Corporate risks result from OTS not having the right people, processes and systems. All risks are considered in the context of the outcome, for industry that includes business sustainability.
Risk-based	An evidence based management process focused on prioritising resources through an assessment of the nature and level of threats, vulnerabilities, likelihood, consequences and cost benefit.
Threat	Capability and intent of individuals or groups to cause harm.
Vulnerability	Any weakness that can be exploited by an aggressor to make an asset susceptible to change or cause harm.

Application of the philosophy

This Regulatory Philosophy is informed by the OTS Strategic Plan. It will be applied through the Regulatory Plan and Design.

The Regulatory Plan and Design aims to translate the OTS Strategic Plan and OTS Regulatory Philosophy into reality by describing the transformation journey. It starts by identifying the risks faced in making the transport system more secure. It identifies objectives to treat the risks and consequential vulnerabilities and develops a design to achieve mitigation strategies through effective preventive transport security outcomes. The design takes an “outside in” view of the changes to the system to ensure they are sensible for industry. It concludes with a change implementation plan which identifies the set of initiatives required, monitoring processes and accountabilities.

Document control

Version	Date	Definition
1	4 June 2007	Based on discussions with DOTARS Exec, OTS Exec, CEOs and academics with regulatory experience, individual GMs and discussions with State Offices during April and May 2007
2	16 June 2007	Updated to include feedback from Compliance Managers received on 6 June 2007
3	19 June 2007	Includes feedback from Executive Level representatives from Cargo, Aviation, Maritime and Security Analysis
4	20 June 2007	Updated based on feedback from the OTS Exec meeting of 20 June 2007
5	29 June 2007	Updated with definitions from security analysis
6	16 July 2007	Updated in align with Regulatory Plan
7	10 August 2007	Minor corrections and updates
8	20 September 2007	Revision based on State consultations with industry and OTS staff
9	24 October 2007	Updated after OTS Exec meeting on 23 October 2007
10	17 December 2007	Updated based on feedback from Security Analysis
11	24 January 2008	Minor corrections and updates

