5 key elements of effective compliance training
Traditionally, the main reason for implementing a compliance program has been to mitigate the potential penalties and reputational damage brought about by a breach. The threat of enforceable undertaking arising from a breach. There has been a recent rise in requirements from trading partners who want to ensure that they do business with people who also have appropriate programs in place. This is particularly important when dealing across borders where issues arise in areas such as privacy, data protection and, of course, the raft of extra-territorial anti-bribery laws sweeping the globe.

The holy grail of compliance training programs is that they will have a positive, long-term impact on businesses. Compliance training programs can make businesses more resilient to risk, lowering their cost of capital and increasing their competitive position. They can make organisations more attractive as a place to work for the best staff. And they can make an organisation the first choice for customers and suppliers to do business with. Jim Collins and Jerry Porras’ famous book, Built To Last, draws on empirical evidence tracked over many years, to demonstrate the long-term, sustainable success of business with strong ethical cultures.

Most people are optimists. We never believe the worst is going to happen to us. If it’s too much to ask management to read Built To Last before they review your business case for a compliance training program, they can always refer to the Morgan Stanley case from 2012 to understand the benefits of investing in a program.

The US Department of Justice (DOJ) decided not to prosecute Morgan Stanley over breaches of the Foreign Corrupt Practices Act (FCPA). Why? Because the bank had a strong compliance training program in place:

### Morgan Stanley

**Case study of effective compliance training program**

In 2012, a former Morgan Stanley real estate dealmaker was sentenced to nine months in prison for skirting the bank’s internal controls in an effort to enrich himself and a Chinese government official. Garth Peterson, 43, pleaded guilty in April to conspiring to evade internal accounting controls that Morgan Stanley was required to maintain under the U.S. Foreign Corrupt Practices Act, an anti-bribery law. Peterson, a managing director in Morgan Stanley’s real estate investment and fund advisory business in Shanghai, was fired in 2008 amid a probe into a suspect real estate deal, court records showed.
The decision not to prosecute was based on evidence of the following:

- Rigorous internal controls
- Regular training and reminders on policy and compliance
- Internal policies that addressed the corruption risks associated with the giving of gifts, business entertainment, travel, lodging, meals, charitable contributions and employment, that were updated regularly to reflect regulatory developments and specific risks
- Compliance program monitoring and auditing
- Extensive due diligence on potential business partners and stringent controls on payments to business partners

Morgan Stanley updated its internal policies regularly to reflect regulatory developments and specific risks. This prohibited bribery and addressed corruption risks associated with a broad range of business-related activities.

Morgan Stanley frequently trained its employees in its internal policies, the FCPA and other anti-corruption laws.

The SEC Complaint expressly laid out the details of Morgan Stanley’s anti-corruption compliance program and how it directly related to Peterson.

The charging document in the criminal case also described in great detail Morgan Stanley’s internal controls.

The DOJ’s press release explained that the decision not to charge the bank was based on the voluntary disclosure, cooperation and pre-existing compliance program. Morgan Stanley could cite evidence of the following:

- **Accountability** for its assets and prevention of its employees from offering, promising or paying anything of value to foreign government officials through its strong system of internal controls.
- **Internal policies** that prohibited bribery and addressed corruption risks associated with the giving of gifts, business entertainment, travel, lodging, meals, charitable contributions and employment and updated those policies regularly to reflect regulatory developments and specific risks;
- **Frequent training** of its employees on its internal policies, the FCPA and other anti-corruption laws. Between 2002 and 2008, Morgan Stanley trained various groups of Asia-based personnel on anti-corruption policies 54 times. During the same period, it trained Peterson on the FCPA seven times and reminded him to comply with the FCPA at least 35 times.
- **Regular monitoring** by compliance personnel of transactions; random audits of particular employees; transactions and business units; and testing to identify illicit payments.
- **Extensive due diligence** on all new business partners and imposed stringent controls on payments made to business partners."
1. Take a risk based approach

Compliance training is a burden to business. A burden that can have positive outcomes, but still a burden that can be costly and more importantly time consuming. Remembering that each hour of training is multiplied across the number of staff to be trained, it is vital that organisations apply solutions that provide speed to competence.

The challenge most organisations face is to measure what is an appropriate level of training for different risk profiles across their staff and structures. There is some guidance available:

- The "Adequate Procedures Guidance to the UK Bribery Act" provides that “general training could be mandatory for new employees or for agents (on a weighted risk basis) as part of an induction process”. The Guidance adds that:
  
  …it may be appropriate to require associated persons to undergo training. This will be particularly relevant for high-risk associated persons. In any event, organisations may wish to encourage associated persons to adopt bribery prevention training.

- An "associated person" is defined as an individual or entity that “perform services for or on behalf” of an organisation.

- The "US Federal Sentencing Guidelines for Organizations" applies to criminal violations of federal statutes such as the US Foreign Corrupt Practices Act. It mandates that an organisation:
  
  shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to ["members of the governing authority, high-level personnel, substantial authority personnel, the organization’s employees, and, as appropriate, the organization’s agents"] by conducting effective training programs and otherwise disseminating information appropriate to such individuals’ respective roles and responsibilities.

In Australia guidance can be taken from the Australian Standard on Compliance, which states the following:

Education and training of employees should be:

(a) Based on an assessment of gaps in employee knowledge and competence.
(b) Ongoing from the time of induction.
(c) Aligned to the corporate training system.
(d) Practical and readily understood by employees.
(e) Relevant to the day-to-day work of employees and illustrative of the industry, organisation or sector concerned.
(f) Sufficiently flexible to account for a range of techniques to accommodate the differing needs of organisations and employees.
(g) Assessed for effectiveness.
(h) Updated as required.
(i) Recorded.
In addition to looking at the risks posed by particular job roles, organisations should also consider the following:

- **Country Risk** - What is the correlation between growth markets and corruption risk and what is the perceived level of corruption? The Transparency International Corruption Perceptions Index will assist here.

- **Sector Risk** - Has government publicly stated the industry is under scrutiny or already conducted investigations in the sector? Are there compliance risks particular to the industry?

- **Business Opportunity Risk** - Is the business opportunity a high value project for your company? Are there multiple contractors or intermediaries involved in the bidding or contract execution phase?

- **Business Partnership Risk** - Does this business opportunity require a foreign government relationship? Does a foreign government require you to rely upon any third parties?

- **Transaction Risk** - Are you required to use any intermediaries to obtain licences and permits?

2. **Ensure the training is regularly refreshed**

Corporate ethics and compliance training programs should not be static. Regulators worldwide have made it clear that they expect organisations to regularly assess risks, and review and update their policies and training programs to reflect evolving best practices.

Training will never be the panacea to all compliance problems. There will always be rogue employees. But it is still important that training does not become a ‘tick and flick’ exercise. Training content should be refreshed regularly for both legislative and regulatory updates, and in line with current case law. Training resources, including online learning materials, should also be refreshed so that it doesn’t look dated and tired. Staff should always be able to find something new in the materials that wasn’t there last time.

A little bit of work done upfront to define the risks faced by job roles in your organisation should confirm that curricula applied to those staff is relevant. The same can be applied when providing training to partner and suppliers. These steps help to reduce the amount of training and increase its relevance to ensure there are higher rates of engagement and comprehension and less time wasted on inappropriate training.

Staff are often asked to retrain on certain topics year on year. (Remember, at Morgan Stanley, Peterson was trained at least seven times in as many years.) If we expect the message to get through, we need to constantly find new ways to highlight the risks that confront our organisations and employees.
3. Respect your staff

Training must be pitched at an appropriate level to engage your employees. There is no point putting people through an hour-long compliance game if they could have learned the material in 15 minutes. Similarly, there is little value in giving staff full copies of dry, complex legislation if they cannot see how it is applied in context to their day-to-day activities.

It is important to localise the training materials wherever possible, so that they use appropriate language, imagery and accents, as well as draw on local case law that is relevant to staff. Online compliance training is particularly flexible here. It allows multiple versions of a course to be developed and sends a consistent message across the whole organisational population.

Management and the Board also need to walk the talk. They must participate in the training programs themselves. Implementing a program for staff is ineffectual if the leaders are too precious to do it themselves. On the other hand, an endorsement from the top, both of the program and the values it represents, provides a strong message, as does integrating the desired outcomes for the program into ongoing business planning.

A general consensus has emerged among prosecutors, educators and corporate ethics and compliance officers that rules-based compliance programs have little chance of preventing serious misconduct unless they are anchored in core ethical values advocated, modelled and enforced by the corporation.

4. Frequency and methodology of training

Psychologist Hermann Ebbinghaus was one of the first to scientifically study forgetting. His work led to the development of The Ebbinghaus Forgetting Curve. His research revealed a decelerating relationship between forgetting and time. Initially, information is often lost very quickly after it is learned. Over time, less and less is lost.

To promote memory retention, three key factors need to be considered:

- Frequency of training
- Multiple training delivery methodologies
- Applicability to day-to-day activities

Many organisations will roll out their compliance training at induction, then annually or bi-annually, depending on the perceived risk placed on the particular area of training. They may also add to this schedule if a hot issue arises from a breach within their own organisation or in their industry. Significant changes in legislation may also prompt a decision to retrain employees.

There is always debate about the benefits of online compliance training versus face-to-face training. Both play a vital part in ensuring the compliance message is understood across the whole organisation. Online learning is available as required. It provides consistent training across the whole organisation, can be easily tracked and is relatively cheap to deliver. Face-to-face training provides a better opportunity for understanding context, answering specific questions and ensuring relevance to day-to-day job responsibilities. Both these methods should be backed up with company policies that are reviewed regularly and attested to by employees. Most importantly the corporate culture should correspond to the training, ensuring that the board and management are in full support of the program and that their endorsement is communicated to the whole organisation.

For training to really sink in and be remembered, it must be relevant to the day-to-day activities of those being trained. If people can put the training into context on a daily basis, they are less likely to forget what they have been trained on. Again, part of this comes down to culture. Taking shortcuts that circumvent compliance will only devalue the effectiveness of the training.
All good learning management systems will provide you with a level of reporting and analysis to ensure that you are tracking the completions and pass/fail rates from your compliance training program. Many will allow you to set automated reminders to staff and escalate those reminders to managers. More sophisticated systems will help you identify where there are systemic issues in your organisation or across particular divisions, locations or language groups. In addition to training records, it is important to keep records of policy versions and attestations.

Action must always be taken up to follow up on any issues identified by your system. A compliance training program needs to be constantly reviewed, with performance checked and content updated and refreshed. Where there are continuing problems with groups or individuals in the organisation, action needs to be taken quickly, so that the intentions behind the program are met and the culture in the organisation aligns with the spirit and force of the compliance training program.

Many other elements go into ensuring the success of a compliance training program. As our understanding of human learning styles evolves, so too will the programs we develop. Technology will improve and our ability to leverage that will be enhanced. It is important to ensure that these programs are living programs, evolving to face new risks, improve learning outcomes, lessen the impact of forgetting, enhance the organisational culture and, indeed, enable us to build our organisations to last.
About the author

Julian has been Managing Director of Governance, Risk & Compliance Solutions since March 2012. Prior to this Julian was CEO of Blake Dawson Technology. Julian holds a Masters of Business Administration from the University of Sydney and is a graduate member of the Australian Institute of Company Directors and a member of the GRC Institute.

Following a career in hospitality and retail management, Julian moved into the legal compliance industry in October 2000. Since that time he has been instrumental in the development of the online compliance training industry in Australia. Julian is a regular presenter in Australia and Asia on marketing professional services, legal technology, and managing organisational compliance.

Resources

i See more at: http://consumersfederation.org.au/australia-takes-lead-role-in-developing-international-compliance-standard/#sthash.AN6eXLOK.dpuf
iii World Economic Forum Partnering Against Corruption Initiative (PACI)
iv Michael Josephson, The Josephson Institute

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GRC Solutions provides governance, risk and compliance solutions for organisations across the Asia Pacific. We specialise in helping organisations navigate complex legal and regulatory environments, mitigate risk and develop cultures of compliance. Through the implementation of our award-winning Salt Online Compliance Training and Hitec’s policy management solution – PolicyHub, GRC Solutions ensures your staff have access to up-to-date ethics, risk and compliance training and company policies. Find out more www.grcsolutions.com.au

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