

## CONTINUOUS COMPLIANCE AND PRODUCT DEVELOPMENT

Continuous compliance is not always possible, even in organisations that have well designed compliance systems. Compliance must be put into the daily practice of the business.

New product development and changes to existing products involve compliance risks. This can occur because of the way in which decisions are made and the way such projects are implemented.

### Even small changes have risks

In *Australian Competition and Consumer Commission V Wizard Mortgage Corporation Limited* [2002] FCA 1317 considered an existing advertisement for a loan product which had been legally cleared but had been changed by the marketing head by adding in an interest rate (there was no rate before). However the product was not available at that rate. The Federal Court agreed with the ACCC that the ad was misleading and deceptive.

In *BMW Australia Limited v Australian Competition & Consumer Commission* [2003] FCA 727 the Federal Court of Australia found that BMW's 2002 318i model had breached the Trade Practices Act (TPA) by using safety warnings on the jacks which did not comply with the Australian Safety Standards. In dispute was the importance of 5 words which had been omitted.

### The decision making process

Decisions on new products and changes to existing products may be made for different reasons:

- Defensive: follow the leader
- Product innovation
- Market research
- Compliance input

How is the decision made? Is there a team that investigates the options and puts together a business case before a decision is made or does the CEO or the board make the decision and then ask one or more people to investigate it?

You need to do your homework to show that careful business judgment was exercised.

Does your pricing model take into account different scenarios?

Have you considered tax issues?

Have you done full "specifications" of the product?

What are the product terms and conditions?

Have pros and cons been weighed?

What are the most important objectives?

Can compromises be made?

Is the change worth making?

What are the different options?

Are there ethical or governance issues?  
Is there any ambiguity?  
Is it fully documented?  
Have you done a cost/benefit analysis?

### **Implementing decisions**

Once the decision is made, who has control? Is there an external Project Manager?  
Is there an implementation team? If so, is every relevant person on it?

An implementation committee should represent the following interests:

- Legal (for issues such as name of product, intellectual property, trade practices, advertising clearance, documentation and specific product regulation)
- Commercial
- Prudential/risk profile
- Accounting/actuarial
- Software (new, modifications)
- Marketing
- HR/training

Will you seek input from your front line staff, key suppliers, customers or regulators?

The committee needs to give clearance at both draft AND final stages.

### **Conclusion**

There needs to be a method for ensuring that a new product or a change to an existing product has been considered from all angles (marketing, IT, compliance, HR, finance etc) before a decision is made to proceed with it.

At the least, failure to do your basic homework can jeopardize your marketing campaign. If timing is critical, the success of the product can be affected.

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