‘Keeping Out of Hot Water...’

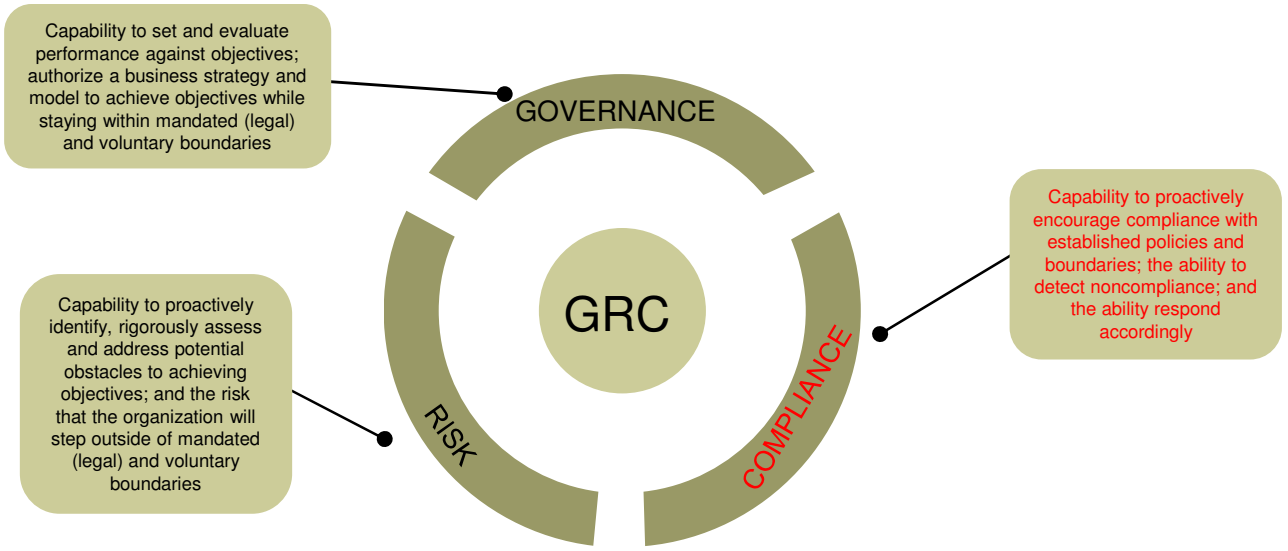
Reducing Exposure by Managing Compliance Better

January 2009

Keeping Out of Hot Water
AGENDA

- **Perspective** - What is the ‘Hot Water’?
- **Compliance?** - the ‘C’ in GRC
- **Scope** - Breadth and Scale, and Cost of Compliance
- **Typical Compliance Failures** – Can they be avoided?
- **Responsibilities for Compliance & Impact of Failure**
- **Design Considerations for an Effective Compliance System**
- **Positive Compliance Management**
- **Summary**

Compliance in Context
The ‘C’ in GRC



Compliance is a state of being in accordance with established internally or externally set legislation, or regulation, best practice or professional standards, policies, procedures, guidelines, specifications - applicable locally, nationally, and / or globally

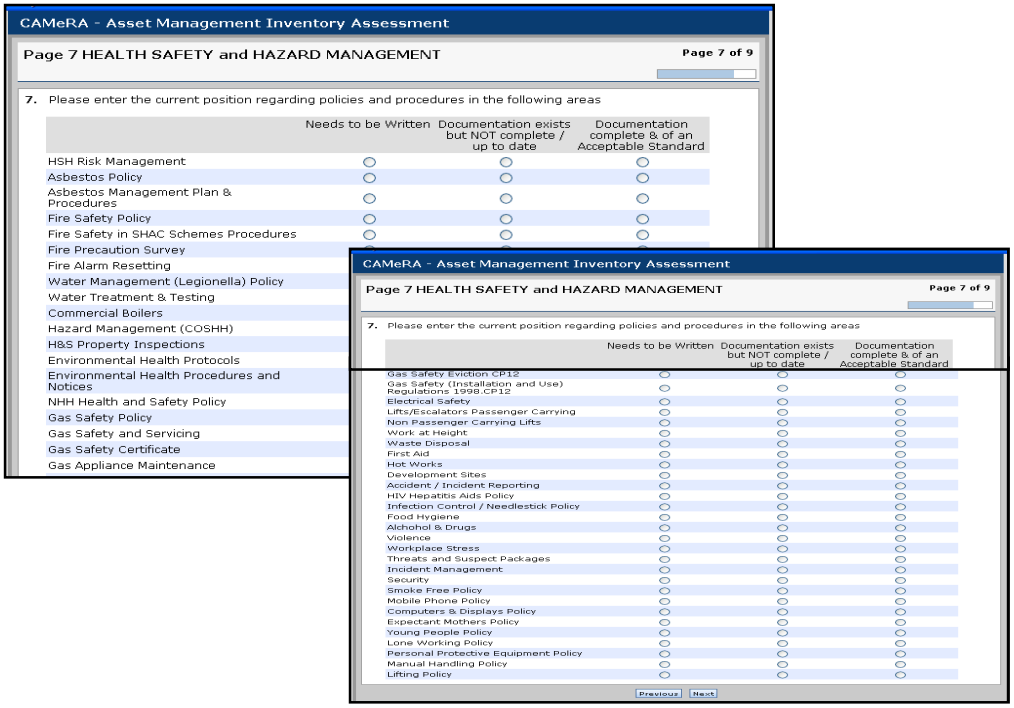
The 'C' in GRC - Compliance solutions are wide in scope e.g. HR Compliance

Finance/banking	Insurance	Biotechnology	Automotive	Chemical	Telecom/tech	Oil/gas	Healthcare	Higher education	Pharmaceutical	Utility	Others
Governance											
Anti-corruption											
Financial assurance											
Information management											
Employment											
Intellectual property											
Environmental											
International transactions											
Product quality/safety											
Competitive practices											
Workplace health/safety											
Government dealings (USA)											

Employment Compliance

- Compensation
- Executive compensation
- Workplace violence benefits
- Anti-harassment
- Anti-discrimination
- Contingent workforce
- Hiring / retention
- Termination / reduction
- Employment information privacy
- Accommodation / leave
- Labour / collective bargaining
- Global mobility / immigration
- Anti-Retaliation / whistle-blowing
- Employment torts

Compliance Scope –
Property Compliance Health & Safety



CAMeRA - Asset Management Inventory Assessment

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7. Please enter the current position regarding policies and procedures in the following areas

	Needs to be Written	Documentation exists but NOT complete / up to date	Documentation complete & of an Acceptable Standard
HSH Risk Management	○	○	○
Asbestos Policy	○	○	○
Asbestos Management Plan & Procedures	○	○	○
Fire Safety Policy	○	○	○
Fire Safety in SHAC Schemes Procedures	○	○	○
Fire Precaution Survey			
Fire Alarm Resetting			
Water Management (Legionella) Policy			
Water Treatment & Testing			
Commercial Boilers			
Hazard Management (COSHH)			
H&S Property Inspections			
Environmental Health Protocols			
Environmental Health Procedures and Notices			
NHH Health and Safety Policy			
Gas Safety Policy			
Gas Safety and Servicing			
Gas Safety Certificate			
Gas Appliance Maintenance			

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7. Please enter the current position regarding policies and procedures in the following areas

	Needs to be Written	Documentation exists but NOT complete / up to date	Documentation complete & of an Acceptable Standard
Gas Safety Eviction CP12	○	○	○
Gas Safety (Installation and Use) Regulations 1998.CP12	○	○	○
Electrical Safety	○	○	○
Lifts/Escalators Passenger Carrying	○	○	○
Non Passenger Carrying Lifts	○	○	○
Work at Height	○	○	○
Waste Disposal	○	○	○
First Aid	○	○	○
Hot Works	○	○	○
Development Sites	○	○	○
Accident / Incident Reporting	○	○	○
HIV Hepatitis Aids Policy	○	○	○
Infection Control / Needlestick Policy	○	○	○
Food Hygiene	○	○	○
Alchohol & Drugs	○	○	○
Violence	○	○	○
Workplace Stress	○	○	○
Threats and Suspect Packages	○	○	○
Incident Management	○	○	○
Security	○	○	○
Smoke Free Policy	○	○	○
Mobile Phone Policy	○	○	○
Computers & Displays Policy	○	○	○
Expectant Mothers Policy	○	○	○
Young People Policy	○	○	○
Lone Working Policy	○	○	○
Personal Protective Equipment Policy	○	○	○
Manual Handling Policy	○	○	○
Lifting Policy	○	○	○

Previous Next

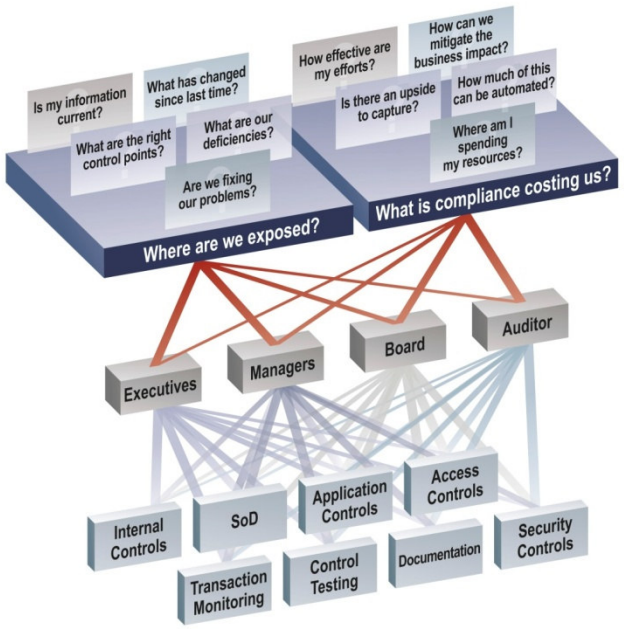
The Cost of Compliance
US Government

- **Government mandated regulatory compliance costs as much as**
  - All spending by state and local governments (education, police, welfare, etc.)
  - Twice as much as Social Security and Medicare spending
  - 3 times more than national defense
- **Complying with government regulations consumes $1.4 Trillion**
  - $1,028 billion federal mandates, $343 billion state and local government mandates
  - 14.9% of the economy - $4,680 per man, woman and child

  (Note : Excludes the compliance cost impacts of the Patriot Act and Sarbanes-Oxley regulations)
- **Federal agencies spent more than $15 billion in 1997 on regulatory activities, up from $1.9 billion in 1960. Federal expenditures on regulatory activity increased 2.7 times faster than economic growth since 1960 - at 14% per year, compounded**

Compliance Disconnects

Compliance Exposures & Hidden Costs



- ✓ High and increasing number of legislative and regulatory requirements
- ✓ Keeping pace with the increasing number, complexity and frequency of change in compliance requirements
- ✓ Lots of organisations have never looked at property-related compliance before in a holistic and structured manner – consequently risks have not been assessed effectively; compliance costs never calculated ; no driver for change
- ✓ COST of compliance – the increased number of people required to participate in confirming compliance
- ✓ Compliance arrangements dealt with in silos – resulting in uncoordinated and duplicative effort and cost.

Property Compliance Management - The Problem

Surveyed Property Managers / CEO's on Top 3 issues / Concerns

- Meeting Service Standards
- Financial & Development Risk
- Governance and Compliance

Perceived Challenges of Property-Related Compliance?

- Scale / scope of compliance requirements - myriad of increasingly wide and complex legislation and regulation on property related issues
- Managing compliance risks effectively at operational / staff level
- Managing compliance through third party contractors
- Managing enterprise-wide compliance processes to deliver positive compliance results in a cost effective manner

Follow-up……3 Key Questions on Compliance

- Do you think you are compliant in all areas?.....'don't know but suspect not...'
- Do you know in which areas you are not compliant?.....'I could guess but honestly….I don't know for sure...'
- Do you know the exposures from being non compliant? ...'don't know..'

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Fire

Each year many people suffer burns caused by the uncontrollable ignition of the flammable chemicals and other materials they work with. Work with flammable substances is hazardous because of the risk of fire and explosions. October 2006 saw the biggest change in UK fire safety legislation since the introduction of fire certificates in 1971 with the introduction of the Regulatory Reform Order (Fire) 2006. With effect from this date a formal fire risk assessment has been a requirement for all non-domestic premises

Failure to comply with these requirements can result in a prison sentence of up to two years. The Association of British Insurers suggests that 40% of businesses do not recover following a fire, and the average cost of a fire in commercial premises in 2003 is estimated at £58,100.

Incidents caused by Fire

What Happened?	What Went Wrong?	Could this have been prevented ?
The Stardust fire was a fatal fire which took place at a nightclub [Dublin, Ireland] in February 1981. Some 841 people had entered the nightclub, of whom 48 died and 214 were injured as a result of the fire.	• Some of the fire exits were blocked • Provision of adequate and fit-for-purpose fire extinguishers • Metal plates were fixed on the inside of some windows • Iron bars were fixed on the outside of some windows	YES
A Harrow landlord has been ordered to pay more than £10,000 in fines and costs for breaching fire safety regulations, after a successful prosecution by the London Fire Brigade. The prosecution followed a fire at a house of multiple occupation in November 2007.	• The fire alarm was not functioning and the main exit from the building was obstructed by building materials. • Fire doors were unserviceable due to missing or broken parts and the fire extinguishers were past their testing dates. • The cupboard of the main electrical supply unit was full of combustible material and wires had	YES

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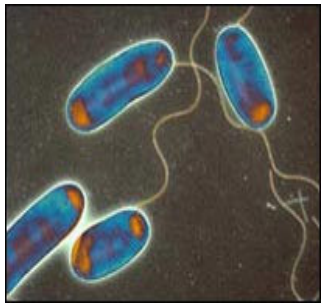
Water



Water Management duties under the Health & Safety at Work Act 1974 extend to the risks from Legioniella bacteria that may arise from the workplace or workplace activities. Discovered in 1976 Legionella is the name given to a group of bacteria that include the species L. pneumophilia that cause legioniella or Legionnaires' disease.

Legionella bacteria are common in many natural environments specifically aquatic ones such as rivers, lakes and reservoirs, usually in low numbers. However, legioniella bacteria can also proliferate in the built environment. For example infectious and harmful outbreaks occur from purpose-built water systems such as cooling towers, evaporative condensers and whirlpool spas, hot water systems and fountains where temperatures of 25 degrees to 45 degrees Celsius are sustainable enough to encourage growth. Disease is transmitted by inhalation of water droplets.

Incidents caused by Water

What Happened?	What Went Wrong?	Could this have been prevented ?
In August 2002, seven members of the public died and 180 people suffered ill health as a result of an outbreak of legioniella at a council-owned arts and leisure facility at a town centre in Cumbria.	• The local authority delayed in completing risk assessments for the facility; • The local authority failed in establishing proper contract documentation and contract supervision following a change of maintenance contractor; • The local authority failed to deal properly with correspondence from the HSE; • The local authority failed to appoint an identifiable owner of the compliance area.	YES
A four-star hotel near Cardiff has been fined £40,000 after two guests died from Legionnaires' disease.	• The unit sprayed a fine mist over food to keep it looking fresh, but instead infected the hotel dining room with the disease. • Link Unit's, managing director admitted failure to educate himself on the procedures for avoiding Legionnaires' Disease in court.	YES

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Electricity

Electricity kills and injures people. About 1000 electrical accidents are reported to the HSE, and about 25 people die of their injuries. The HSE aims to prevent electrical injuries by enforcing health and safety law and by prompting good practice in the design, use and maintenance of electrical systems. Electrical Inspectors strive to influence and encourage employers, the self-employed and workers to take electrical safety seriously. They accomplish this by performing a wide range of work activities, including the following: inspections; responding to complaints; advise workers and individuals; investigate accidents; prosecute; assess the suitability of safety cases etc…

Incidents caused by Electricity

What Happened?	What Went Wrong?	Could this have been prevented ?
An employee received a fatal electric shock whilst changing a welding rod during arc-welding work inside a metal silo. The employer was prosecuted and £250,000 at Crown Court.	• It was found that there was a voltage of no more than 86 Volts ac between the welding rod and the silo metalwork when no welding was taking place. • There was an unsafe system of work in this hazardous environment. • It was found during the investigation that the electrical equipment in use at the time of the accident was damaged but this was found not to be contributory to the accident	YES
A trainee scaffolder received a fatal electric shock whilst handling a 6.4 metre long scaffold tube that came into contact with an 11,000 Volt overhead power line. The company employing the worker was prosecuted under the Health and Safety at Work etc Act Section 2(1), and fined.	• No site specific risk assessment had been done, only generic ones at the office. • The company should have closely supervised the trainee until he was able to demonstrate competence in a wide range of work situations. • The company should have undertaken a risk assessment for that site and told all workers of the results of the risk assessment.	YES

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Gas

According to the HSE statistics annually around 20 people die from CO poisoning caused by gas appliances and flues that have not been properly installed, maintained or that are poorly ventilated. British Gas claim the figure for fatalities to be up to 50. Many others suffer ill health. When gas does not burn properly, as with other fuels such as coal, wood or oil, excess CO is produced which is poisonous. Carbon monoxide (CO) is a colourless, odourless, tasteless, poisonous gas produced by incomplete burning of carbon-based fuels, including gas, oil, wood and coal. Carbon-based fuels are safe to use. It is only when the fuel does not burn properly that excess CO is produced, which is poisonous. When CO enters the body, it prevents the blood from bringing oxygen to cells, tissues, and organs.

Incidents caused by Gas

What Happened?	What Went Wrong?	Could this have been prevented ?
A woman who sued a Scottish Council for £3.5m after a gas leak killed her boyfriend and left her severely disabled has received an out-of-court settlement. In 2000,	• A faulty gas heating system was blamed for the death of the male and the females permanent brain damage. • It was alleged that there had been a build-up of carbon monoxide and that an earlier routine service of a warm air unit did not detect that the gas was beginning to leak out.	YES
A northern Metropolitan Borough Council was fined a total of £10,000 and ordered to pay costs of £6,830 in November 2006. Twenty five pupils and two members of teaching staff were evacuated from a classroom in the school when they were overcome by carbon monoxide.	• Tests carried out by HSE found that carbon monoxide was being produced by an inadequately maintained boiler in the boiler plant room and leaking into the classroom above. • Failure by Metropolitan Borough Council to operate an effective **gas safety management system** was the most significant matter. • The boiler plant had not been maintained correctly, causing it to produce carbon monoxide which then leaked into the classroom.	YES

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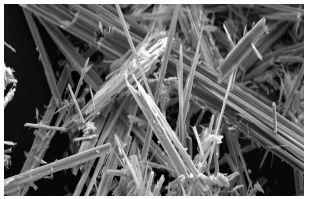
ASBESTOS



Asbestos is the greatest single cause of work-related deaths in the UK. Every week twenty trades persons die from asbestos-related disease, and approximately 4000 deaths per annum are asbestos related. Asbestos was extensively used as a building material in the UK from the 1950s through to the mid-1980s primarily for fireproofing and insulation. Any building built before 2000 can contain asbestos.
There are three main diseases caused by asbestos: mesothelioma (which is always fatal), lung cancer (almost always fatal) and asbestosis (not always fatal, but it can be very debilitating).

Incidents caused by Asbestos

What Happened?	What Went Wrong?	Could this have been prevented?
An Essex firm was fined £150,000 with costs of £30,000 at Ipswich Crown Court (August 2008). The company pleaded guilty to Section 2.1 of the Health and Safety at Work etc Act 1974 and Regulation 18 of the Construction (Health, Safety and Welfare) Regulations 1996.	• The HSE investigation found the building to be contaminated with ACM's and evidence was found that asbestos insulation board (AIB) had not been removed following adequate safety procedures. • The firm failed to protect persons from asbestos containing materials • The firm failed to make safe the area containing asbestos containing materials	YES
A Cambridge college has been fined [March 2008] after employees were exposed to asbestos fibres during painting work.	• The HSE's investigation revealed that the College had allowed its employees to work on asbestos-containing materials without taking the appropriate precautions. Work on the type of material present in the theatre required a licence under the Control of Asbestos Regulations 2006. • The exposure of employees to asbestos at the College could and should have been avoided by straightforward safety precautions….the HSE stated.	YES

Compliance Failures
Corporate Manslaughter Act 2007

An organisation to which this section applies is guilty of an offence if :

- the way in which its **activities are managed or organised**
- **causes a person's death**, and
- amounts to a **gross breach** of a **relevant duty of care** owed by the organisation to the deceased

  An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its **senior management** is a substantial element in the breach

  Senior Management - In relation to an organisation, means the persons who play significant roles in:

  (i) the **making of decisions** about how the whole or a substantial part of its activities are to be managed or organised, or

  (ii) the **actual managing or organising** of the whole or a substantial part of those activities.

Compliance Failures

Corporate Manslaughter Act 2007

For the purposes of this Act, whether a particular organisation owes a duty of care to a particular individual is a question of law.

(1) This section applies where:

(a) it is established that an organisation owed a relevant duty of care to a person, and

(b) it falls to the jury to decide whether there was a gross breach of that duty.

(2) The jury must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach, and if so: -

(a) how serious that failure was;

(b) how much of a risk of death it posed.

(3) The jury may also:

(a) consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure as is mentioned in subsection

(b) or to have produced tolerance of it;

Property Compliance Review
Typical Initial Observations

Social Housing Client has a significant scope to cover in terms of asset management compliance areas – some 120 separate areas of legislative, regulatory or best practice policies and procedures. Tenant related compliance areas (outside of scope for this Project could add another 70 to 80)

Operational Observations

- Some disconnects on Compliance Management organisationally – Corporate, H & S, Property Services etc are covering some of the same ground to a greater or lesser extent and there are also some considerable gaps
- Need to clarify and embed clear ownership to specific compliance areas – at position level and embed in Job Descriptions
- Need to define Standards for documentation of Policies & Procedures to ensure consistency and through that completeness
- Need to capture compliance knowledge in a structured form – loss of staff has resulted in loss of knowledge. Need for a central repository of all (at least) asset management compliance related documentation
- Need for a research resource to ensure that all changes to legislation/regulation are picked up and actioned appropriately
- Need for an embedded validation / audit function to confirm ongoing compliance

Asset Management
Compliance Survey Summary

121 - Discrete Compliance Areas surveyed

Compliance Policy Areas (121)

- 46 – Need to be Written (38%)
- 38– Exist but not Complete/Up to Date (31.4%)
- 28 – Documented to Acceptable Standard (23.1%)
- 9 – No Response (7.5%) - Includes 8 Policy Owners not confirmed

Compliance Area Procedures Status (121)

- 33 – Procedures Not in Place (27.3%)
- 29 – Procedures Mostly Not in Place (24%)
- 16 - Procedures Mostly in Place (13.2%)
- 26 - Procedures Working to an Acceptable Standard (21.5%)
- 17 - No Response (14%)

CAMeRA™ – Issues Impacting Effective Property-Related Compliance

- Scale – the widening scope and rate of growth in scale / complexity / frequency of changes in property-related compliance requirements
- Not keeping pace with change – maintaining the currency of compliance requirements and compliance tasks as they change
- Lack of focus on compliance management – property portfolio managed at property (vertical) level rather than compliance (horizontal) level
- Lack of a 'Golden Thread'- Laws, Regulations, Policies, Procedures, Tasks – inadequate design of an end-to-end compliance system
- Lack of Accountability – Lack of clarity / ambiguity in individual responsibilities for compliance and internal disconnects re compliance responsibilities – e.g. legal, risk management, H & S, property compliance

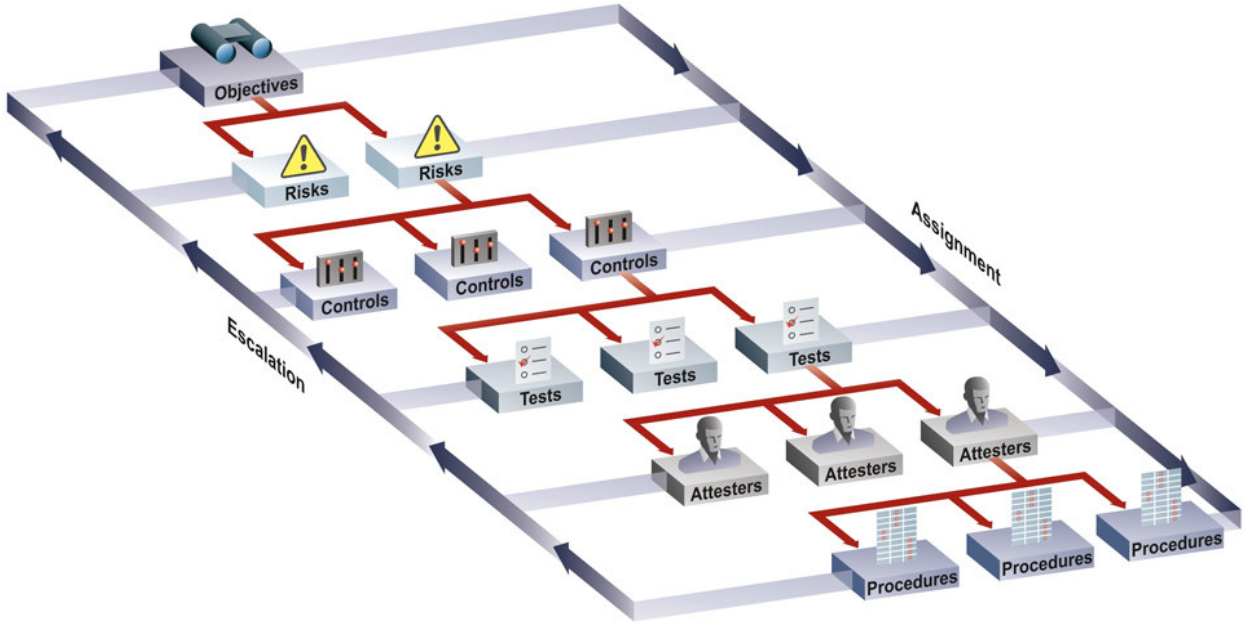
CAMeRA™ – Issues Impacting Effective Property-Related Compliance

- Lack of transparency on current status – At any point in time - Are we compliant? If not, where not? Why not? Exposure? Remediation?
- Inconsistent and inadequate documentation standards - form, format, content
- Lack of a central repository for compliance documentation to control currency of compliance requirements
- Management by Exception – react to compliance problems – overall approach of correct rather than avoid

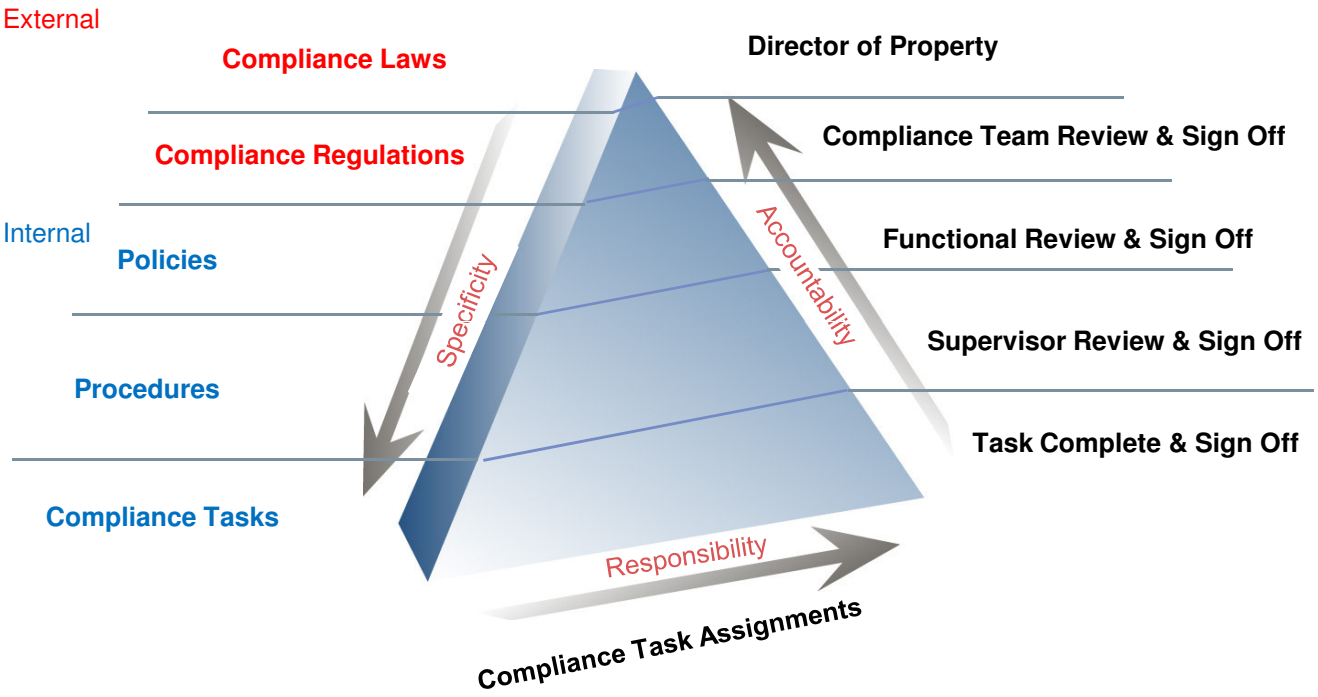
CAMeRA™ – Property
Compliance Solution Design Criteria

- Create a ‘Golden Thread’ - Laws, Regulations, Best Practices, Policies, Procedures, and Tasks required to ensure compliance
- Review and streamline existing compliance activities to ensure complete & remove redundancies
- Embed Accountability – identified compliance ‘to do’ tasks AND staff responsible
- Active Compliance Management - Positive confirmation on compliance tasks at defined intervals
- Supervision and Review – Create accountability hierarchy to assure quality
- Ongoing transparency on compliance status
- Document repository – Central Storage and Version Control
- Automated solution – efficient and effective – through enabling technology

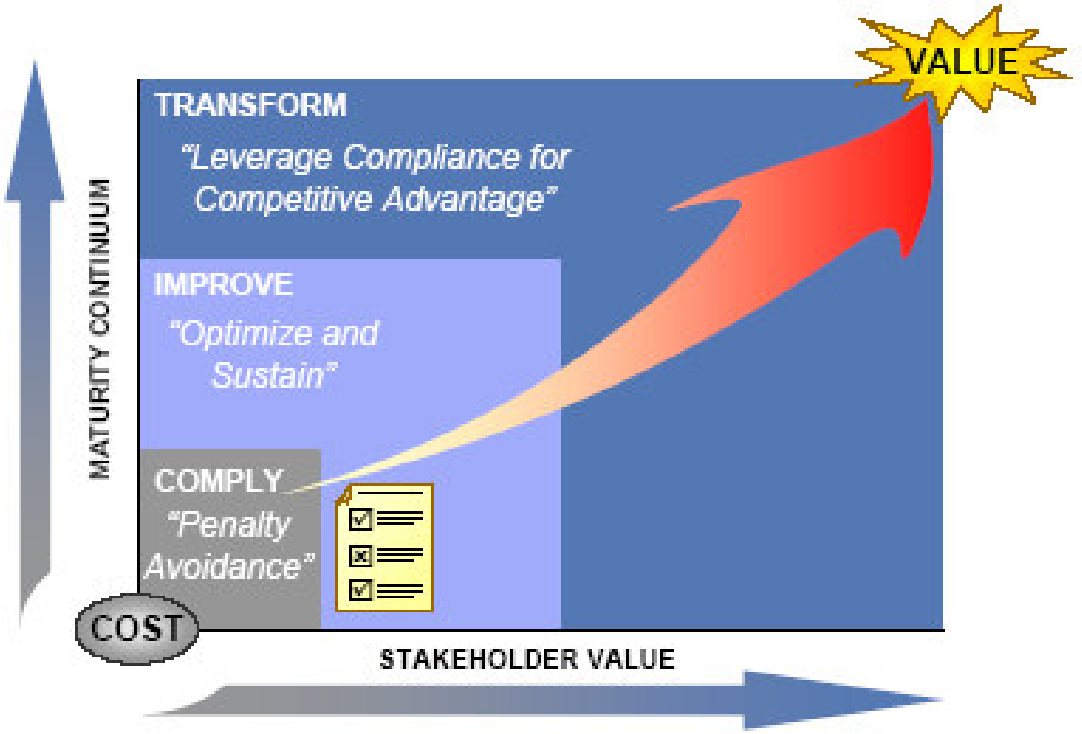
Architecture – a logical, intuitive workflow to manage controls design, testing and attest processes for any compliance regime



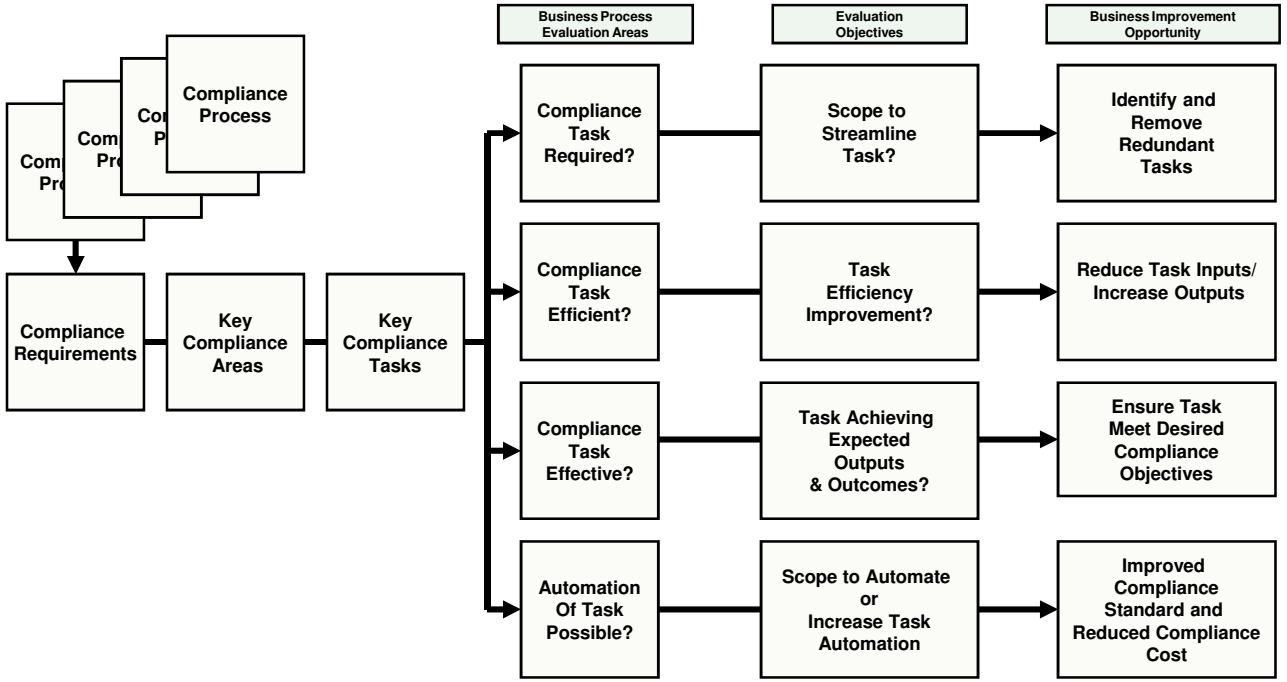
Compliance – A Design Model



Compliance –
Solution Maturity Model



Focusing Eefforts on Compliance
Process Improvement



Summary

- Compliance scope, scale is significant & increasing
- Plethora of complex areas where compliance responses are generally not well planned or executed
- Scope for significant improvement in many organisations – effectiveness and efficiency
- Consequences of failure can be very significant – Corporate Manslaughter Act
- Needs expert input from subject matter experts
- Structure is key to an effective solution
- Identify and line-up Responsibility & Accountability
- POSITIVE compliance is the new standard globally
- Focus on prevent rather than cure