

Actions Resulting from Non-compliance

Background

In accordance with the BoatSafe Audit and Compliance Framework, non-compliance in one or more of an authority holder's obligations under the BoatSafe Business Rules may be identified as a result of an audit or by other means (i.e. an investigation into potential non-compliant behaviour).

Purpose

The purpose of this policy is to provide common themes surrounding non-compliance and the potential actions that could be undertaken. This policy also is a mechanism to support transparency and consistency with the decision-making process by the BoatSafe team.

The severity of the identified non-compliance, deemed Critical, Major and Minor, will determine any actions required to be undertaken by the BoatSafe team. In addition, the identification of repeated non-compliance will increase the severity wherein administrative action may be a result.

It should be noted that this policy is not a comprehensive record of all non-compliance and actions undertaken.

Responsibilities

| Area | Representative | Responsibility |
|----------|---|---|
| BoatSafe | Senior Auditor Senior Policy Advisor | Conduct of audits and investigations in line with the BoatSafe Business Rules and associated standards. Identification of any non-compliance resulting from an audit and/or investigation. |
| BoatSafe | Manager, BoatSafe | Utilising the findings of an audit or investigation, make an informed decision on whether administrative action is required and, if so, the appropriate action to be undertaken. |

Levels of Non-compliance

In accordance with Section 7 of the BoatSafe Audit and Compliance Framework, the different levels of non-compliance are:

Critical Non-compliance

A critical non-compliance is that which significantly compromises the effectiveness of the authority and the approved BoatSafe training and assessment program being delivered as operations deviates significantly from specified requirements. Examples of critical non-compliance include, but are not limited to:

- operating outside the scope of the authority (for example, issuing Statement/s of Competency when the approved BoatSafe training and assessment program has not been completed in its entirety, issuing Statement/s of Competency whilst an authority is lapsed, suspended or cancelled)
- failure to uphold Suitable Persons requirements
- failure to deliver the approved BoatSafe training and assessment program in accordance with the requirements stipulated within the Business Rules, and associated standards and legislation, to a level which significantly compromises the training and assessment outcome to student/s
- failure to provide a training ship and/or personal watercraft to the student that is in a safe and compliant condition
- failure to permit representative/s of MSQ entry onto a premises for the purposes of a BoatSafe audit, or allowing representative/s access to records, documents, resources and equipment
- intimidation, abuse or similar of a representative/s of MSQ, current or previous student/s, or another BTO and/or BTP representative/s
- use of an individual with no authority to deliver the approved BoatSafe training and assessment program.

Major Non-compliance

A major non-compliance is that which compromises the effectiveness of the authority and the approved BoatSafe training and assessment program being delivered as operations deviates from specified requirements. Examples of major non-compliance include, but are not limited to:

- failure to advise the BoatSafe team of any changes to the operation or management of the authority holder within 14 days from the date of the change
- failure to deliver the approved BoatSafe training and assessment program in accordance with the requirements stipulated within the Business Rules, and associated standards and legislation, where the training and assessment outcome received by student/s is impacted
- failure to ensure suitable training and assessment facilities are available and utilised
- failure to ensure suitable training resource equipment are available and utilised.

Minor Non-compliance

A minor non-compliance is that which threatens neither the effectiveness nor assurance provided by the authority, however, is a non-compliance with the requirements stipulated within the Business Rules, and associated standards and legislation. Examples of minor non-compliance include, but are not limited to:

- failure to retain records.

Actions

Example One

An audit was conducted on a BTP authority holder which resulted in non-compliance being identified wherein:

- theory training provided did not address all elements within the relevant Competency Standard, nor the prescribed timeframes
- training resources and notes were retained by the students during the completion of the theory assessment.

Due to the number of elements that were not covered from the relevant Competency Standard during the conduct of the theory training, impacting on the student outcome, the identified non-compliance was deemed to be at the level of Major. As a result, the BTP authority holder was requested to Show Cause as to why their authority should not be suspended for a three (3) month period.

Example Two

An investigation was undertaken on a BTP authority holder which resulted in non-compliance being identified wherein:

- not all practical activities identified on the Recreational Marine Driver Licence Practical Assessment Statement were demonstrated, practiced or assessed
- issuance of Statements of Competency without practical training and assessment being completed for Personal Watercraft.

As a result of the investigation, it was identified that the student outcome was severely impacted due to the significant number of practical activities not performed, in addition to the issuance of Statements of Competency when competence could not be determined as practical training and assessment was not completed. Therefore, the identified non-compliance was deemed to be at the level of Critical.

As such, the BTP authority holder was requested to Show Cause as to why their authority should not be cancelled.

Example Three

An audit was undertaken on a BTO authority holder which resulted in non-compliance being identified wherein:

- the lesson plans utilised did not address all elements within the relevant Competency Standard, nor the prescribed timeframes
- the lesson plans did not effectively guide BTP authority holders in the delivery of a compliant BoatSafe course whereby an BTP authority holder would not cover all elements within the relevant Competency Standard, meet all prescribed timeframes, or present the mandated Maritime Safety Queensland night navigation and GPS videos.

Due to the impact to the student outcome as a result of having no supporting processes for its BTP authority holders, the identified non-compliance was deemed to be at the level of Major. The BTO authority holder was requested to Show Cause as to why their authority should not be suspended for a three (3) month period.

Example Four

An audit was undertaken on a BTP authority holder which resulted in non-compliance being identified wherein:

- one practical activity identified on the relevant Practical Assessment Statement was not demonstrated, practiced or assessed
- verbal intervention occurred by the BTP authority holder on one practical activity for one student.

Given that the student outcome was not significantly impacted, the identified non-compliance was deemed to be at the level of Minor. To resolve the non-compliance, rectification remained at an assurance from the BTP

authority holder that the non-compliance will not occur in future BoatSafe courses. However, it was noted to the BTP authority holder that, should the non-compliance be identified in future audits or investigations, the level of non-compliance would be increased, and administrative action may be undertaken.

Example Five

An investigation was undertaken on a BTP authority holder which resulted in non-compliance being identified wherein:

- theory training provided did not address the prescribed timeframes
- practical training and assessment were conducted in significantly short timeframes (i.e. five minutes)
- issuance of Statements of Competency without practical training and assessment being completed for Personal Watercraft.

As a result of the investigation, it was identified that the student outcome was severely impacted, therefore, the identified non-compliance was deemed to be at the level of Critical.

Prior to action being undertaken, the BTP authority holder voluntarily relinquished their authority. In the absence of a valid authority, the BoatSafe team formally notified the BTO authority holder of its findings, whereby the BTP authority holder would have been requested to Show Cause as to why their authority should not be cancelled.

Relevant documents and references

- BoatSafe Business Rules
- BoatSafe Audit and Compliance Framework
- BoatSafe RMDL Competency Standard
- BoatSafe PWCL Competency Standard
- BoatSafe Audit Report
- BoatSafe Training and Assessment Observation Checklist
- BoatSafe Compliance Observation Checklist

Departmental Version Control

| Version Number | Revision Date | Author | Summary of Changes | Approved by |
|----------------|---------------|----------------|--------------------|----------------|
| 1.0 | | Kylie Hartnett | Initial release | Phillip Hambly |