

Speech on building internal culture
given to ESV Staff by the Director – 23 February 2013

What is a Good Regulator?

OPENS WITH PICTURE OF SUPERMAN

Given the enormous pressure on regulators that I spoke of in my opening address it probably isn't a surprise that we might imagine a good regulator to be Superman or Wonder Woman...

But as I will argue, maybe a good regulator is something more modest – notwithstanding the enormous challenges we face.

Our audience or regulatory clients can be counted in the millions; they are many and varied, powerful and influential as well as the ordinary person trying to turn a profit or deliver a service. In short, they keep the economy spinning which is the greatest determinant of our standard of living.

But it is also those same businesses and individuals who are primarily responsible for ensuring their own and others safety. That we should cause them to take all appropriate action, as far as practicable, to deliver those safe outcomes is our great mission – not the mindless turning of the compliance or enforcement handle for the sake of it.

Regulators have never been so scrutinised. We can be criticised for acting too late or too soon or not at all. We can be seen as heavy handed or captured by those we are supposedly regulating. We must be sticklers for process and procedure but not so inflexible that we are perceived as pursuing process as an end itself.

Whilst a good regulator must have good and appropriate legislative framework, clear objectives and the systems and procedures - things that are germane to any well functioning organisation – more than anyone else the good regulator must know the value and benefit of subtlety, psychology, communication as well as technical judgment. So the solution is not - attractive as it sounds - being imbued with Superman's powers - who we all know had his own Achilles heel in "Kryptonite".

Having recently read the book "The Paradox of Regulation" the author Fiona Haines makes the obvious point that the world we live in requires a good regulator to be capable of dealing with great ambiguity – dealing not just with what some call "actuarial or technical risk", being the probability and impact of something bad happening, but at times recognising that society and communities want to feel safe, that they need assurance and someone (usually Governments) and their agencies will provide them with that comfort. Clearly our tool kits can't always save them from every technical risk imaginable (even if they expect us to do

so). But without being sympathetic to what some say is the biggest risks we deal with – social and political risk – rather than the technical risk of something bad happening then we cannot be good and effective regulators. A good regulator will find other ways of dealing with problems than just writing more regulations. Guarding against short sightedness and looking to the bigger picture must therefore be our mantra. Many a regulator has been blindsided by events outside their immediate focus...with disastrous results – even if they were not directly responsible. There are some parallels with ESV and the bushfires and more recently smart meters. There have been countless company collapses (HIH, various banks, building societies, property trusts) the GFC (involving credit rating agencies, investment banks) and numerous energy infrastructure disasters which have more often than not brought regulators into disrepute – sometimes unfairly.

The point about being aware of social and political risks is important because being conscious of the social and political environment goes hand in hand with maintaining the critical support of the elected government and the community. We do have an important role in supporting them beyond the narrow application of the regulations.

No matter how good we think we are, no matter how strong our powers are or the amount of resources available to us, no matter how good we are technically - no regulator can do

its job without the strong mandate of its government and community.

But maintaining a strong mandate from the people and politicians is no mean feat and as I will outline it requires attention to an extraordinary number of things and it can evaporate in an instant.

However - there is one thing that transcends all technical and organisational qualities and attributes, something that goes to that most fundamental requirement - public confidence and trust.

It is something much bandied about but often a bit abstract to have meaning in our daily lives – that word is INTEGRITY. There are many synonyms - truthfulness, honesty, trustworthiness – those things that make up the moral or ethical code that guides us all whether someone is looking or checking up on us or not.

When we lose that reputation for INTEGRITY we have nothing. There is an old rule called the 10/80/10 rule. And it applies as much to integrity as anything else. 10% will demonstrate integrity all the time, 10% will sadly be seriously challenged and the remaining 80% will operate on the basis of the prevailing culture - what are others getting away with and what is the boss doing. When culture is bad no amount of checking or independent integrity commissions will reverse it – although the existence of accountability will surely provide a sense of comfort. My job is to inspire as

many of you as possible to move into the top 10% or recruit from that top 10% in the population so that it makes up 90% of ESV. In so doing you will all take on that leadership role with your fellow colleagues and workers so you we will all be guided in knowing what is right and expected – without being told, checked or followed up.

Recently we have seen the sad unraveling of the reputations of many organisations and individuals including other regulators, unions, MPs and Ministers with the countless allegations and accusations of cronyism, abuse of expenses, misconduct, taking bribes, receiving favours and improper payments. Hopefully these are things that afflict others. But it doesn't have to be big to trespass against the core principle of INTEGRITY. For example, I am often amazed when people don't think seem to think that taking time from their employer is dishonesty. Even if for the great majority of you who do put in a decent days work there is a virtue in pursuing ongoing efficiency and productivity – the small and larger changes to the way we work as a regulator to prove to the community and government we are here for them and not ourselves. You have a moral obligation to point to those things that can be done more efficiently and better. These are all matters that go ultimately to reinforcing our bigger reputation of being a regulator with integrity. And to quote Wilf Jarvis ensuring that we maintain a balance between love, truth and the responsible use of power not just with each other but with those we regulate.

So assuming we are above all else – a regulator holding to the very highest standards of integrity - what other boxes should we be ticking to be a good regulator...

Knowing our industry is high up on the list – that is, knowing the issues, problems, weaknesses and trends. It is why we emphasise consultation so much in our daily work as regulators. This way we can constantly balance and tune our approaches and find ways of achieving compliance and safer outcomes, be it through persuasion, cooperation and education or ultimately enforcement. This also means understanding the burden we create and always looking for ways of making it easier for business and householders to deal with us and vice versa. When we know the industries we regulate we can be alert to emerging risks and ensure that the allocation of scarce resources across the business is optimal.

As regulators we are given enormous powers some of which are coercive. With those powers comes huge responsibility including adherence to the principles of administrative law, being clear on delegations and authorities, keeping to procedures including record keeping, applying natural justice, giving reasons, being predictable in the way we administer our discretions, following documented processes and if they are not followed explaining and recording why – these are also the hallmarks of a good regulator.

Our values of respect, integrity, partnerships and accountability (RIPA) are further pointers as well as the values which ESV is statutorily required to uphold under the Public Administration Act including – striving to earn and sustain public trust of a high level; being impartial – that is making decisions on merit, without bias, caprice, favoritism or self interest and when challenged as sometimes we are - subjecting ourselves to scrutiny and accountability not hiding or being defensive.

This is a very high standard to aspire to, it is not easy and but I am reminded finally on most days of a quote which happens to adorn the plaque of the British Paras in King's Domain - a unit my father served in on D Day in 1944.

“For we are noted for being at once most adventurous in action and most reflective beforehand. Other men are bold in ignorance, while reflection will stop their onset but the bravest are surely those who have the clearest vision of what is before them, glory and danger alike and yet notwithstanding go out to meet it”

Thucydides

My final word on a good regulator must therefore be the regulator that is surely reflective but when called to act will do so with moral courage in the best knowledge that what he or she has done is right.

CLOSES WITH PICTURE OF Dalai Lama

Maybe something between Superman and Dalai Lama is more appropriate...

By the way Thucydides was Greek historian and Athenian general who lived five centuries before Christ. Thucydides is the father of "scientific history", because of his strict standards of evidence-gathering and analysis in terms of cause and effect without reference to intervention by the gods.

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