

Perspective

Sustainable Governance and Responsive Regulation: The Higher Education Sector and Maritime Industry in Australia

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ABSTRACT

The paper challenges traditional perspectives around the voluntary nature of a corporation's social responsibilities in light of debates around responsive regulation that requires regulatory engagement by salient stakeholders in the processes and outcomes of an organisation's operations in contemporary dynamic environments. In critiquing regulatory reform, the paper highlights conditions and cultures that enhance collaborative practice to support a more holistic appreciation of risk, stakeholder engagement and corporate sustainability outcomes. These factors are seen as relevant to more sustainable governance and to enhancing a social licence to operate for both regulator and regulatees. These insights help shape a dynamic "responsive regulation" model to achieve the objectives of regulatory partnerships for more sustainable governance and organisational outcomes. The model facilitates an exploration of regulatory behaviours, attitudes and cultures in the increasingly marketised higher education sector and maritime industry. These include: the nature of collaborative process in promoting a shared understanding of industry-wide and contextually nuanced pressures on regulators and regulatees; addressing dynamic stakeholder expectations concerning economic, social, environmental and governance activity; the ethics of broad-based stakeholder engagement in identifying and addressing problems; and, means of achieving more holistic action in addressing attendant risks to sustainability of business and regulatory processes. The paper discusses opportunities, in an era of regulatory capitalism, for responsive regulation and associated stakeholder engagement to constitute a significant mechanism whereby more sustainable governance might be achieved.

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INTRODUCTION

A key focus of the special edition is to identify corporate sustainability both from the perspective of economic sustainability performance (ESP) to create shareholder value, as well as that of non-financial activities to achieve environmental, social and governance (ESG) sustainability performance to protect the interests of all stakeholders. Sustainable governance through stakeholder engagement in dynamic environments is the focus of this paper.

The paper presents a perspective on sustainable governance by exploring regulatory partnerships between business, government and, by implication, the community. Regulators are empowered by governments and the broader community to administer and enforce regulation designed to balance and protect the interests of stakeholder groups. Regulated entities (referred to as regulatees) operate with varying degrees of concern for and engagement with their stakeholder groups. In considering what might constitute more sustainable governance practice, a framework around responsive regulatory practice is developed to explore regulatory partnerships between regulators and regulatees.

It is suggested that the goals of sustainable development and corporate sustainability might share a common challenge in addressing stakeholder interests and concerns through adopting an integrated appreciation of, and approach to economic, social, environmental and governance domains of activity. It is also noted that the concept of “sustainable development”, as articulated by the Brundtland Commission in 1987, was dynamic and holistic, requiring institutional change to address otherwise siloed approaches to development. The paper explores the nature of governance in this environment. Associated debates question the adequacy and limitations of a voluntary approach to addressing societal responsibilities. The paper extends this argument by identifying attendant risks to corporate sustainability in adopting this mindset in the regulatory process. The drivers of “regulatory capitalism” are the background against which regulatory reform in Australia seeks to reduce regulatory burdens on business through approaches that are proportionate to perceived risks. The paper identifies the ethical underpinnings of broad-based stakeholder engagement in a responsive regulatory environment.

In line with these observations, the model of ‘responsive regulation’ proposed by Ayres and Braithwaite [1] includes stakeholder engagement to better appreciate the dynamic nature of risk and responsibility as well as the value to both regulator and regulatee of understanding integrated economic, social, environmental and governance challenges they face respectively in contemporary volatile and complex situations. A number of critical factors emanating from this model are applied as lenses through which to explore regulatory partnerships in the higher education (HE) sector and maritime industry. Insights gained from comparing the respective approaches to responsive regulatory practice

highlight challenges faced and potential development pathways for achieving more sustainable governance and corporate sustainability in an era of regulatory capitalism.

SUSTAINABLE DEVELOPMENT, CORPORATE SUSTAINABILITY AND SUSTAINABLE GOVERNANCE

Corporate sustainability has foundational links to the concept of “sustainable development”, both reflecting an integrated approach to economic, environmental, social and institutional dimensions of development [2,3]. Spangenberg [4] highlighted that an institutional dimension was necessary for meeting the challenges of implementing an appropriately integrated approach to sustainable development. In 2007, the UN’s *Indicators for Sustainable Development: Guidelines and Methodologies* [5] reshaped the indicators previously arranged under the four pillars to a more thematic set that emphasised “... the multi-dimensional nature of sustainable development ... reflect[ing] the importance of integrating its pillars”. Both “corporate sustainability” and “sustainable development” share a further common understanding that acknowledging and responding to stakeholder interests and concerns underpins the process of integration. This can occur through “help[ing] to identify all actors and groups of actors who need to get involved in order to create sustainable value...” [6].

The Brundtland Commission’s report *Our Common Future* [2] envisioned sustainable development holistically and dynamically, being “... not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs.” (para. 30). The Brundtland report highlighted the need for institutional change to overcome what were considered “... narrow preoccupations and compartmentalized concerns ... [of institutions that were] independent, fragmented, working to relatively narrow mandates with closed decision processes” (para 31, 32). The outcomes of global conferences that occurred subsequent to the Brundtland report, i.e., the 1992 Rio Declaration and Agenda 21 [7], the 2002 Johannesburg Plan of Implementation [8], Rio+20’s *The Future We Want* in 2012 [9] and the High-Level Political Forum subsequent to 2015 [10] recognised the challenges of effective partnerships between governments, the private sector and civil society in achieving Sustainable Development Goals (SDGs).

Against this background this paper focuses on the complexity of governance challenges in achieving sustainable institutional and organisational outcomes through regulatory partnerships between governments, the private sector and other stakeholders in what has been called an era of “regulatory capitalism” [11]. Recent challenges associated with the COVID-19 pandemic have illustrated the necessity of

governments, regulators, the private sector and civil society to work together in resolving global complex problems and their manifestation at local levels. Benn [12] noted the emergence of new forms of governance to facilitate corporate sustainability required the firm to go “... beyond compliance and shareholder value to address the needs of stakeholders such as employees, suppliers, customers, the wider community and the natural environment”. Increasingly, governance has the responsibility to consider numerous, diverse and multi-disciplinary stakeholder perspectives in decision-making. This challenge becomes starkly apparent in periods of global crisis that require urgent negotiation of the nature and scope of regulation in the context of shifting stakeholder needs and risks. We suggest that fostering stakeholder collaboration to enable effective self-regulatory behaviours requires a shared stakeholder understanding of both industry-wide and contextually nuanced pressures, tensions and paradoxes, with their various levels of urgency and shifting stakes.

The pressures on business to respond to global shifts and crises appear to challenge the voluntary nature of social responsibility in stakeholder-based regulation. The costs of regulation to society are spiraling in this environment. Adopting a minimalist mindset as a regulatee, i.e., failing to engage with regulators to consider emergent community perspectives in responding to regulatory frameworks limits the potential for regulatory reform whilst increasing costs and inefficiencies. Responsive regulation fosters the expectation that organisations will increasingly apply principles of virtuous citizenry within a regulatory framework often requiring regulators and regulatees to shift their perspectives and contributions within the regulatory process. Such a shift appears to have implications for corporate social responsibility (CSR) in achieving more holistic societal benefit from the process of regulation.

CHALLENGING THE VOLUNTARY NATURE OF A CORPORATION'S SOCIETAL RESPONSIBILITY: IMPLICATIONS FOR REGULATORY ENGAGEMENT BY STAKEHOLDERS

Wheeler, Colbert and Freeman [13] suggested that academic debates had “... tended to focus on the interplay between the rights of investors [or shareholders] versus those of other stakeholders”. They claimed that tensions existed between an economic focus exemplified as a simple agency theory of the firm based on economic principles (e.g., Jensen & Meckling [14]) and stakeholder theory of the firm (e.g., Freeman [15]), the latter requiring both instrumental and normative explanations of value creation with implications for economic sustainability. This contribution is still relevant in that it recognises a symbiosis between an economic and broader stakeholder approach to the creation of societal value, Mitchell and Lee [16] suggesting that value creation occurs through synergised

stakeholder activities embracing awareness, identification, understanding and prioritisation of work.

CSR has traditionally and widely been seen as the voluntary activity of a corporation in addressing concerns of this broader base of stakeholders, beyond that required by legislation and regulation [17]. McWilliams and Siegel [18] clearly state that “CSR is beyond that which is required by law”. Dentchev, van Balen and Haezendonck [19] have noted that a predominant focus on voluntarism implies that social responsibility is discretionary and that consequently, government has minimal responsibility concerning CSR. However, questions have been raised as to whether we need to move beyond more traditional definitions of voluntary CSR in achieving corporate sustainability. For example, Waagstein [20] noted cases in both developed and developing nations of mandatory and legal CSR calling in to question the voluntary nature of the concept. These tensions around the voluntary versus mandatory debate led to a refinement of the European Commission’s often cited 2001 definition of CSR, suggesting that in an age of urgent global, social and economic challenges, more specific guidance from government to give substance to the notion of social responsibility is valued. They noted that:

The development of CSR should be led by enterprises themselves. Public authorities should play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation, for example, to promote transparency, create market incentives for responsible business conduct, and ensure corporate accountability.

Enterprises must be given the flexibility to innovate and to develop an approach to CSR that is appropriate to their circumstances. Many enterprises nevertheless value the existence of principles and guidelines that are supported by public authorities, to benchmark their own policies and performance, and to promote a more level playing field. [21]

Gatti, Vishwanath, Steele et al. [22] conclude from their study of recent regulatory developments towards mandatory CSR that this evolution constitutes a new paradigm in which the business-society relationship recognises “... a new function of governments and external institutions in the regulation and promotion of CSR”. Earlier, Waagstein [20] noted that the dynamic nature of CSR makes boundaries fluid between mandatory or customary CSR and voluntary CSR and that the issues of concern to stakeholders define these boundaries.

The dynamic nature of CSR also implies that its content evolves and shifts over time depending on changes in the degree of risk, regulation, reputational challenge, and standards of desirable behavior, which redefine the boundaries of what is acceptable,

feasible, and profitable ... Such content is, therefore, best understood in terms of stakeholders and issues that concern them... [20]

Perhaps a legacy of a voluntaristic focus of CSR theory is an underappreciation of dynamic interactions between organisations and in this case, the regulatory process.

Frameworks for reform of the regulatory process such as the Australian Government's *Regulator Performance Framework* (RPF) [23] suggest a need for enhanced integrative thinking between regulatees and the regulator, emphasising societal benefit through improved quality of dialogue and mutual education. Achieving such outcomes appears to foster a "lighter touch" approach in proportion to perceived risk [1,24], a key focus being on gaining a shared understanding of environmental shifts and sectoral responses. The co-creation of synergised responses to meet market opportunities and to address pressures for maintenance of standards through quality assurance frameworks is identified in the RPF which perceives improved practice as including "[r]egulators establish[ing] cooperative and collaborative relationships with stakeholders to promote trust and improve the efficiency and effectiveness of the regulatory framework" [23].

Thus, the emphasis here is not specifically on the question as to whether and how CSR should combine voluntaristic and mandatory societal responsibilities. Rather, we suggest that enhanced engagement between regulators and regulatees over salient stakeholder concerns can produce the type of outcomes anticipated in the RPF as more responsive forms of regulation, and that such outcomes in turbulent global environments might be conceptualised as a form of CSR that can contribute to corporate sustainability of societal benefit. Information analysed in the examples used below helps critique this assumption.

It is also an important feature of responsive regulatory approaches, detailed below, that business and government gain insight and advantage by collaboration in framing innovative and relevant responses to dynamic shifts in the environment. There is the possibility that additional ethical interpretations and mutual obligations arise through dynamic stakeholder interactions [25] around information sharing, mutual education, and openness to the stakes and perspectives of others to shape action, as also implied in the Australian RPF [23].

Further, a collaborative approach to CSR has potential to address "risk, regulation, reputational challenge, and standards of desirable behavior, which redefine the boundaries of what is acceptable, feasible, and profitable" [20] within the regulatory process itself. Potential regulatory outcomes include broad agreement around risk and a proportionate regulation that reflects lower risk and less intervention to increase efficiencies and limit burdens associated with the regulatory process.

Transitional problems identified by Gatti, Vishwanath, Steele et al. [22] concern the shift beyond voluntary CSR towards various levels of mandatory forms of CSR in India, where the Government has mandated

CSR and set thresholds for expenditure. They highlight challenges experienced by governments, institutions and academics in re-conceptualising CSR, e.g., in developing “... new function[s] of governments and external institutions in the regulation and promotion of CSR [this being] ... considered a revolutionary advancement in the conceptual debate about the nature and implications of CSR” [22].

Drawing from two industry examples below, we suggest that goals and outcomes around more stakeholder-engaged regulatory behaviour, whether self-, collaborative or directive, might have the potential to challenge and shape organisational governance cultures. As noted earlier, according to Mitchell and Lee [16] consonance amongst stakeholders around awareness, identification, understanding and prioritisation of work can increase the effectiveness of stakeholder engagement. Godfrey and Lewis [25] take this a stage further by suggesting that a stakeholder-focused orientation has the potential to support more ethical decision-making as stakeholders invest in problems and commit to problem solving. From a CSR perspective, stakeholders could educate each other in perceiving positive and negative externalities as a basis for action. Shutkin [26] provides a link between emergent ethics and participatory democracy concluding that “empowering stakeholders and engaging them in the process to better serve them and their communities” promotes sustainable economic development.

REGULATORY REFORMS FOR CONTEMPORARY ENVIRONMENTS

Braithwaite [27], in arguing for collaborative action between organisations and regulators advocated a strategic and contextual application of market principles and their regulation, including when to promote privatisation and when to regulate industries either fully, partly, directly, indirectly, permanently or temporarily to achieve optimal outcomes for society in a mode of capitalism first described as “regulatory capitalism” by Levi-Faur [11]. Braithwaite [28] perceived regulatory capitalism as characterised by a symbiotic relationship of necessity between market-based capitalism and its regulation so as to identify and achieve appropriate societal outcomes. Braithwaite [27] argues that both regulatory institutions and regulatees benefit from an understanding of what each can bring to an ongoing dialogue about the social responsibilities of capital. Responsibility for instituting and maintaining a culture that supports such collaborative arrangements applies also to corporate governance bodies and government regulators in driving innovation and risk sharing activities to address new and emergent challenges.

The politics associated with shifts in regulatory thinking in this contemporary environment are dynamic and complex and require skills beyond top down enforcement of regulatory practice. Australia’s RPF to some extent recognised such tensions and opportunities, recommending policies and practices accordingly. Although a primary intention appears

to be “... reducing the cost of unnecessary or inefficient regulation ... [and] improv[ing] the performance of regulators to adopt consistent, risk-based approaches to administering regulation” [23], the RPF also implies the need for responsive and nuanced regulatory approaches. Its focus on regulatory efficiency and stakeholder engagement puts the onus on both regulators and regulatees to achieve a shared perception of risk as well as a clear, mutual understanding of the intention of the overall regulatory framework. It also requires regulators to: foster a sense of justice and purpose that engenders appropriate levels of compliance; be transparent around risk assessments to demonstrate fairness and impartiality; maximise the opportunity for earned autonomy or self-regulation based on demonstrated histories of compliance; undertake efficient and effective quality information-sharing with regulatees (and with policy departments); undertake monitoring and knowledge creation that justifies a targeted assessment of compliance; and, appraise how such approaches contribute to a continuous, contextual and dynamic improvement of the regulatory regime [23].

We suggest that such a regime proffers opportunity for corporate sustainability through more holistic and mutual engagement of stakeholders concerning the nature of risk and appropriate interventions. The tenor of the RPF appears to suggest that a less symbiotic and hybrid approach could result in excessive red tape or less than full compliance monitoring, rather than promoting exploration of options to address emergent and dynamic forms of risk. Accordingly, contemporary regulatory philosophy and behaviour discussed later demonstrates potential benefits of broader stakeholder engagement beyond simplified efficiency goals towards more adaptive and dynamic approaches that balance the innovation afforded by market opportunity with regulatory practice that maintains appropriate standards. Implicitly this approach supports risk and cost sharing of regulatory practice to achieve more effective organisational adaptation to meet community expectations and needs.

In the following section we highlight contemporary debate around the inherent ethics of engaging economic, social, environmental and governance stakeholders in identifying common problems and addressing them. These insights help explore the role of more holistic identification and management of risk in the context of sustainable governance practice.

INTEGRATING ECONOMIC, SOCIAL, ENVIRONMENTAL AND GOVERNANCE GOALS FOR SUSTAINABLE OUTCOMES: CRITIQUE OF STAKEHOLDER ROLES AND ETHICS

Fleming and Jones [29] have critiqued the emergence of the stakeholder model.

All of a sudden groups ostensibly outside of the managing or owning elite have a 'stake' in the activities of the business. This conceptually 'breaks open' the isolated enterprise and connects it to a myriad of groups who might affect or be affected by the business ... whereas previous management frameworks were based on a military metaphor of commanding and controlling external variables, this approach implies some kind of bond with interested parties that is more conciliatory, consultative and communicative [29].

We assert that this process of breaking open the mindset of the corporation allows new synergies between ESP and ESG that are reflected to some extent in the notion of stakeholder-based responsive regulation described below. However, adding an important perspective on power and the stakeholder model, Banerjee [30] argues that discourses around CSR, sustainability and stakeholder theory “are intended to legitimise and consolidate the power of large corporations”. Fleming and Jones [29] extend this argument by highlighting that many stakeholder relationships are essentially based on regulatory or legislative requirements, suggesting that they depend largely on their instrumental utility to management for improving organisational performance. Thus, they challenge normative dimensions of stakeholder theory, suggesting that most stakeholders are constrained by ideological commitments underpinning their power bases. Accordingly, Fleming and Jones warn against idealising business and society as operating benignly on a “pluralist playing field”, reconciling morality and the pursuit of profit. They conclude that a more critical political economy of CSR would recognise “... CSR initiatives within the context of a proactive mode of capitalism, whereby new sources of legitimacy and value are actively sought outside the traditional realm of business” [29]. We support this view and seek to recognise power differentials and political agendas embedded in existing or suggested stakeholder relations within contemporary regulatory processes in complex, market-based environments. We comment upon the role and perceived motivation of government in the pursuit of reaching stakeholder-based compliance. As noted previously, regulators seek to represent and protect the interests of a broader group of community stakeholders, whilst regulating a single institution or group of institutions. This appears to require identifying, balancing and synergising stakeholder interests in shifting environments to achieve regulatory goals, performing ‘checks and balances’ between power interests as well as promoting the regulator’s own interests.

Bichta [31] explored the relationship between government and the promotion of CSR, suggesting the stakeholder perspective created a normative dimension to CSR, with “... managerial values and discretion ... being key promoters of socially responsible actions and the notion of organisational moral responsibility analogous to that of individuals”. On this basis, she saw value in an interventionist government to enhance CSR behaviours towards societal benefit. Given the diverse nature of

stakeholder perspectives, the ethics associated with the state developing standards to facilitate appropriate CSR behaviours appear challenging. The theory around pragmatism, pluralism and ethics discussed below provides a lens to focus on state intervention within a responsive regulation model, leveraging stakeholder collaboration to achieve more sustainable outcomes.

Godfrey and Lewis [25] expound pragmatism and pluralism as a moral foundation for stakeholder theory, drawing from William James, John Dewey and John Rawls. James notes that “there is no such thing possible as an ethical philosophy dogmatically made up in advance” [32] because multiple individuals associated with problems and their solution will have interests, desires and demands that need recognition and “there is always a pinch between the ideal and the actual which can only be got through by leaving part of the ideal behind ... and [the decision-maker] needs to know which part” [32]. Globalisation and technology adoption have increased the complexity of dynamic interactions within a community, apparently strengthening the pragmatist stance that the test for moral action and ethicality is whether a course of action agreed by stakeholders will solve a problem at hand [25].

For many commentators concerned with sustainable business practice and governance, hearing multiple and affected voices when dealing with complex problem sets has become synonymous with an ‘ethical’ response. Godfrey and Lewis [25] cite Rawls’ notion of pluralism as a political morality suggesting that a pluralistic society cannot aspire to operate around a single unified moral code. Leveraging Rawlsian logic in contemporary governance and regulatory frameworks to justify engagement of diverse stakeholders requires mutual understanding, synergising and shaping of stakeholder perspectives to enhance, adapt and sustain regulatory frameworks. Potentially such engagement also achieves outcomes for regulatees relevant to their contemporary pressures, aspirations, moral logic and business models.

THE PROCESS OF GOVERNANCE TO FACILITATE CORPORATE SUSTAINABILITY: IMPLICATIONS FOR RISK CONTAINMENT IN COMPLEXITY

A consideration of risk integrates the stakeholder model and a business case approach to the pursuit of sustainable governance practice. Similarly, Benn [12] suggested that a stakeholder theory of the firm [15] allowed a diversity of views reflecting synergies and tensions, as well as more effective forms of governance through the sharing of risk. She noted that inter-organisational collaboration, particularly between public and private sectors, afforded benefits in the form of efficiency, accountability and entrepreneurship, interpreted here as forms of innovation in which governance takes account of shifts in the external environment whilst fulfilling its mission.

Citing Bergkamp (2002), Benn [12] noted that “Regulators ... are seeking to replace command and control relations with partnerships, seeing collaboration as a more effective way of minimising the social and environmental impacts of corporate activity, while enhancing corporate learning”. She highlights the challenges and complexity associated with inter-organisational attempts to share risk when the governance process is seen as a negotiation, arguing that a more effective “... model for governance would facilitate processes of governance as conversation” [12], a process that sees responsible governance promoting sustainability outcomes through sense-making stakeholder claims and interests.

We identified earlier that Bichta [31] suggested government can assist business achieve CSR outcomes, “exercis[ing] the arbiter role through regulation and the setting of minimum standards”. We assume that the regulatory role includes engagement, communication and ultimately sense-making regulatory rationales for stakeholders, challenging perceptions of CSR and associated governance that rely on a binary perspective of stakeholders as more or less compliant with imposed regulation. The latter approach does not acknowledge opportunities and pressures for stakeholder-engaged forms of regulation to contribute to more holistic risk management. We suggest that CSR and sustainable governance cannot be divorced from problem sets defined by stakeholders such as the need for more holistic risk management in complexity to achieve sustainability agendas embedded in regulatory process.

LESSONS FROM REGULATORY RESPONSIVENESS MODELS

So far, we have considered the extent to which CSR might be expected to respond to societal needs, observing a shift away from definitions of CSR that might suggest that compliance with laws and regulations is a priority but that minimal compliance is acceptable, business responsibility to broader societal challenges being limited and voluntaristic. Buhmann [33] has noted that “... on several grounds the alleged voluntary-mandatory dichotomy surrounding much of the CSR debate may be characterised as false and as alleging a distinction between legal compliance and voluntary action that does no justice to the law-based normativity which today permeates CSR in a number of ways”. We suggest that a corporation’s notion of social responsibility should include a collaborative role in responsive regulation.

Braithwaite [27] identified a “new hybrid world order ... [that requires] ... a repertoire of regulatory tactics” in an era of regulatory capitalism characterised by more collaborative partnerships between business and regulators as representatives of broader societal interests. Braithwaite [24] suggests that in this environment, a responsive regulatory regime will produce greatest social benefit. He advocates for a stakeholder approach in which “regulation should be collaborative; the regulator values the strengths of the regulatee in the journey to achieve

change; the regulator draws on the regulatee's values, motivations, abilities and resources to help the regulatee bring about the desired change, ... [seeking] ... to evoke and explore the ambivalence of the regulatee to change in order to help the regulatee resolve their ambivalence and move in the direction of positive change" [34].

Ayres and Braithwaite [1] identify a key assumption underpinning their pyramidal model of 'responsive regulation', i.e., "... policy analysis is about understanding private regulation ... and how it is interdependent with state regulation ..." arguing "... that by working more creatively with the interplay between private and public regulation, government and citizens can design better policy solutions" [1]. This approach suggests a need to enquire into how citizens (including corporations) are regulating themselves before regulatory interventions are escalated to achieve compliance with community standards. Braithwaite [34] further suggests that

Responsive regulation involves listening to multiple stakeholders and making a deliberative and flexible (responsive) choice from regulatory strategies that can be conceptually arranged in a pyramid. At the bottom of the pyramid are more frequently used strategies of first choice that are less coercive, less interventionist, and cheaper [34].

Ayres and Braithwaite's [1] pyramid assumes that governments will be most effective if they communicate to industry that their preferred approach is industry self-regulation, deemed as the least burdensome and most economic option. However, it also responded to possible industry tendencies to exploit self-regulatory powers by including the capacity for the state to escalate enforced compliance, increasing elements of inflexibility and adversarial intervention, with the ultimate possibility of incapacitation. Figure 1 below exemplifies a pyramid of possible enforcement strategies provided by Ayres and Braithwaite [1], individual regulatory environments adapting these basic principles to their own context. To achieve voluntaristic self-regulation it was important that the two top triangles existed even though they may seem to operate in tension with the notion of voluntarism.

Psychological theory concerning motivation towards compliance also underpins this model. In contrast with 'maximal operant theory' in which commitment is seen to vary positively with the size of short-term extrinsic rewards, they argue that

...what may be best for short-term compliance might also be counterproductive for long-term internalization of a desire to comply. And this long-term internalization is the more important matter in almost any domain of social control ... the less salient and powerful the control technique used to secure compliance, the more likely that internalization will result [1].

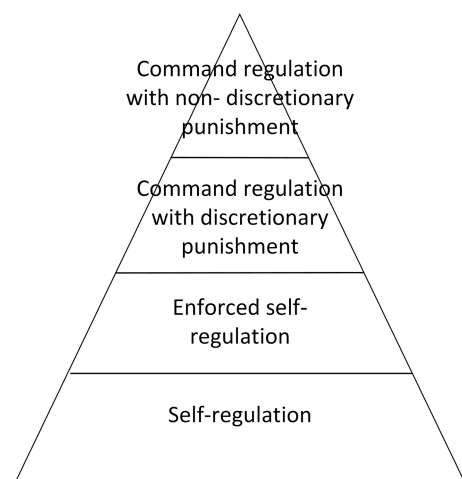


Figure 1. Ayres & Braithwaite's [1] example of a pyramid of enforcement strategies.

This tension is reflected in the structure of the pyramidal model and in the development of a voluntaristic compliance mindset framed within the threat of enforcement of standards.

Previously we have discussed the need for CSR to move beyond a voluntaristic choice to play a more pro-active part in responsive regulation. Gatti, Vishwanath, Steele et al. [22], in highlighting tensions between voluntarism and mandatory approaches to CSR, suggest that

CSR should identify motivating mechanisms to promote compliance ... for example, private self-regulatory systems as codes of conduct and standards cannot rely on fear of public punishments. Different mechanisms belonging to the sphere of personal motivation and morality should be further investigated to understand compliance to ethical values. [22].

In the model at Figure 2 below, we suggest that tensions between the promotion of voluntary and mandatory compliance can be “held” in that stakeholder engagement can inform and influence the regulator mindset and ultimately the regulatory framework, thus encouraging regulatees to better accept the rationale for regulatory activity as responsive to legitimate community perspectives. The model also leverages Braithwaite [24] by identifying key assumptions about actors at the various stages of regulator intervention.

At the base of the triangle, actors are seen as striving to become and maintain the status of “virtuous players” and engage with the regulator through information exchange and education. This is described by Braithwaite [24] as “... privileging restorative justice at the base of the pyramid [to build] legitimacy and therefore compliance”, in that regulatees can question the system and increase their confidence in its fairness. Escalating higher up the system, rational actors are deterred from further escalation in that they “... see that gaming legal obligations and failure to listen to persuasive arguments about the harm their actions are doing and what must be done to repair it will inexorably lead

to escalation. The forces of law are listening, fair and therefore legitimate, but also seen as somewhat invincible” [24]. At the top of the pyramid, incompetent or irrational actors fail to engage with this rationale, leading to various forms of incapacitation such as removal of their licence to operate.

Figure 2 synergises literature on responsive regulation with that around corporate sustainability, dynamic stakeholder decision-making and implications for risk perception and mitigation in the regulatory process. First, it highlights mechanisms through which stakeholder discourse can provide dynamic feedback channels between regulator(s) and regulatees, recognising shifting community values impacting integrated economic, social, governance, environmental and political systems in the regulated sector. Second, it demonstrates how stakeholder interactions will potentially foster dynamic perceptions of risk and responsibility that will influence movement up and down the regulatory pyramid. Third, it suggests that positive developments in CSR and corporate sustainability would include pro-active involvement of organisations with regulators. An optimal mix of public and private activity could help adapt and innovate effective regulatory standards in a complex and dynamic environment, typifying regulatory capitalism. Although not discussed here in detail, the current impact of the COVID-19 pandemic on both the higher education sector and maritime industry exemplifies how unpredictable, exogenous factors can impact the effectiveness of the regulatory framework and the critical role played by stakeholder engagement in urgent collaborative review and adaptation of regulatory frameworks and standards under crisis conditions.

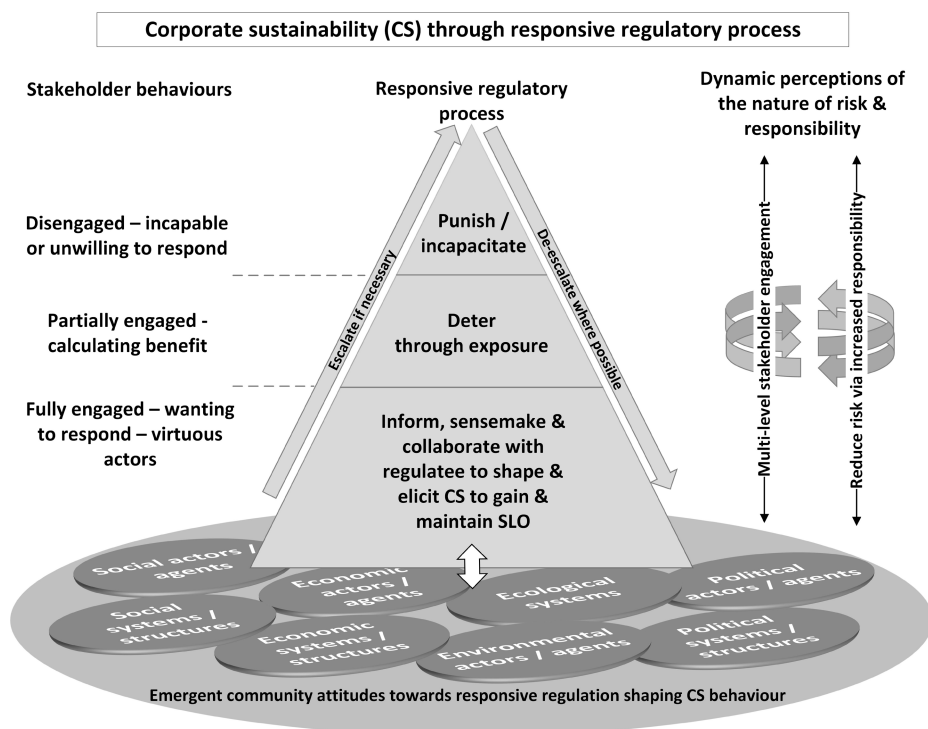


Figure 2. Corporate sustainability through responsive regulatory process.

Insights to be gained from this model are considered below in relation to regulatory practice in the higher education sector and the maritime industry in Australia. The approach here is explorative, providing suggestions rather than conclusions. Drawing from the model outlined above exploration of regulatory practice as evidenced in publicly available documents will include: the extent to and processes by which regulatees become virtuous actors embracing key stakeholder responsibilities; the benefits of a more holistic appreciation of economic, social, environmental and governance challenges and opportunities, critical to a responsive regulatory approach and reflecting community perspectives on regulatory responsibilities; how information and knowledge might be shared to elicit engagement, trust and commitment to the principles of more responsive regulation; how salient stakeholders (including regulator, regulatee and other government, community and business stakeholders) interactively engage over the nature of problems and risk and the implications for continuous improvement of the regulatory framework; how escalation towards, and de-escalation from deterrents and punishment might be perceived in a culture of mutual learning; an engaged and committed approach to broader stakeholder engagement as a dimension of identifying and addressing corporate sustainability goals; and, the potential impact of organisational cultures on responsive regulatory practice. A brief comparison of these issues in each of the two sectors highlights perceived similarities and tensions inherent in these approaches in the broader context of sustainable governance practice.

There follows below a generic discussion of these factors and their implications for regulator and regulatee practice, critiquing the value of a responsive regulatory approach as an indicator of effective governance practices in complex environments.

Becoming Virtuous Actors in the Regulatory Process

As discussed earlier, a key assumption underpinning responsive regulation is the engagement of stakeholders to develop a shared understanding of and commitment to the purpose and practices of the regulatory process. Accordingly, the characteristics of a virtuous actor might include openness to understanding the rationale of the regulatory regime and the confidence and capability to contest its application in a given context in the interests of perceived stakeholder or community benefit. In order to achieve these outcomes and demonstrate effective governance, both the structures and agents involved need to support organisational cultures and individual skillsets that accommodate collaborative interactions between regulator and regulatee.

Thus, a virtuous institutional actor would: be open to new information; seek educative insights that support synergistic thinking across stakeholder perspectives; demonstrate critical capability to evaluate and communicate strengths and weaknesses of regulatory standards; and,

develop skills to engage in a more complex stakeholder-based approach to continuous improvement in the regulatory process, identifying relevant issues at an institutional governance level and in relation to the regulatory process itself.

A More Holistic Appreciation of Economic, Social, Environmental and Governance Challenges and Opportunities, Critical to a Responsive Regulatory Approach

Achieving a better understanding of context in the process of identifying and creating virtuous actors also appears to require a comprehensive understanding of an institution's situation by regulator and regulatee. Such integrated thinking might also highlight the potential for overlap in regulatory practice across multiple regulatory forces that impact a given sector. Thus, skillsets required appear to include a capacity to think in a holistic and integrated manner across diverse domains as a basis for dialogic communication.

This approach seems to address the concerns of Lee Dow and Braithwaite [35] who state “[w]hen regulating as a partner, the regulator undertakes a process of getting to understand the organisation, management’s agenda and aspirations for the organisation, and where evidence permits, raising questions of how management might address impending risks.” They further claim that this requires considerable investment by the regulator in building relationships and that regulators cannot be experts. Rather they might need to broker other expertise, which in turn requires skills to synergise and critique information from these various sources. However, “experts” as stakeholders will have their own perspectives and stakes. Consequently, the notion of power cannot be ignored, as identified by Fleming and Jones [29] who question the normative dimensions of stakeholder theory, within constraints imposed by organisational ideology and culture.

Thus a major challenge appears to be how a regulator responds not only to regulatees, but also to pressures from other stakeholder groups or coalitions of interest such as professional associations and industry bodies. In this context, the culture and mindset provided by the Braithwaite model allows three categories for analysing political drivers; those players seeking a virtuous approach towards a responsive dialogue and communication with the regulator; those using coalitions to challenge the regulator either as individual or as coalitions of interest, and those breaching regulations, acting on the basis of a lack of understanding and engagement, or on an assumption that there is financial or other advantage to be gained from doing so.

Creating Engagement, Trust and Commitment to the Principles of Responsive Regulation

In differentiating between the regulatory paradigm of command and control (i.e., regulating as object) and regulating as a partner (in which

the expertise, knowledge and commitment of the party contributes to motivation and correction), Lee Dow and Braithwaite [35] suggest that trust depends on whether regulator and regulatee share the same objectives. But, ultimately “[b]oth regulator and regulatee would understand, however, that the purpose of the regulatory encounter was to raise concerns about risks and obstructions to achieving the objectives and to work through problems to find a satisfactory solution. It is in this way that regulating through partnering pays dividends”.

Maintaining trust in the process of regulation requires both sensitivity to the impact of process on ‘the other’, a shared appreciation of the effectiveness and fairness of process, and reflection on consistency in maintaining a responsive approach to regulation. The development of these attitudes is challenging, often made more so by command and control organisational cultures that model hierarchical, unilateral, and power-based decision-making values and processes.

Shaping Shared Stakeholder Perspectives on Problems, Risks and Continuous Improvement

The model at Figure 2 suggests that a dimension of a virtuous actor is that they also engage with a regulator in accepting responsibility for the risks of non-compliance, an assumption of Lee Dow and Braithwaite [35] being that “... those being regulated need to be motivated with the regulator to correct a problem or concern”. Inevitably at some stage of this process the regulator will challenge existing notions of risk in the regulatee’s risk management plan. Shared perspectives on the nature and significance of risk are fundamental to effective problem resolution and continuous improvement activity.

Regulation as partnering requires strategic information exchanges rather than prescriptive advice and fragmented information that can be misinterpreted. Rather a regulatee can benefit from demonstrating organisational capability sufficient to critique regulatory standards within context and adapt existing practice. Thus, the co-creation of a relevant knowledge base appears to be a key responsibility of both regulator and regulatee, if the regulatee is to reside at the bottom of the pyramid earning autonomy and light touch regulatory treatment.

Accepting Drivers of Escalation and De-Escalation through a Culture of Mutual Learning

Flowing on from a shared understanding of risk is the acceptance of the regulator’s rationale for processes of escalation and de-escalation through the levels of regulatory intervention. Ivec and Braithwaite [36] suggest that as part of the regulator and regulatee agreeing a plan for addressing a problem, there needs to be “... explicit recognition and acceptance that the regulator will apply sanctions and use coercive means according to the law if all else fails”. They also suggest that given the need for sensitivity to context, evaluating responses to regulation

should happen in context, to allow for periods and processes for adjustment or continuous improvement to meet regulatory guidelines. To enhance this culture of mutual learning, both parties might consider efficiencies in process, especially in environments characterised by dynamic conditions.

Acknowledging the Regulatory Regime Provides for Stakeholder Engagement Relevant to Achieving Corporate Sustainability Objectives

It has been suggested that there might be an uneasy tension between regulatory responsibilities and those associated with quality assurance (QA), including stakeholder engagement [35]. Given earlier arguments concerning the need for clarity and exposure of the diverse elements of organisational and business operations, it is suggested that an investigation of QA policies and processes appears to be an essential tool to identify multiple stakeholder interests and consideration given to them in business planning. It is worth recognising dynamism and complexity as pressures on the QA process itself and the skills required to determine how a QA system facilitates a more holistic appraisal of integrated risk, thus supporting corporate sustainability objectives.

Creating a Stakeholder Culture to Support Responsive Regulation

As noted above, effective governance processes might recognise how more holistic and systemic thinking and associated processes and capability can support collaborative and stakeholder cultures, challenging both regulatees and the regulator. It is unlikely that a culture will be changed on the basis of architectural design and organisation charts, although these are important artefacts supporting mission and values. Demonstrating benefit from stakeholder engagement and observing transparency in process and outcomes are essential when administering responsive regulation, especially to encourage and facilitate more effective relationships with the regulator in the interests of continuous improvement. Deloitte [37] noted in a survey of CEOs and executives that there was a declining level of understanding concerning skills that would be needed in an increasingly dynamic future for sustainable organisations and businesses. It appears that these skills and knowledge bases might include the creation of stakeholder-based cultures to drive collaboration and partnership as elements of innovative practice.

APPLICATION OF THE RESPONSIVE REGULATION MODEL TO EXPLORE THE HE SECTOR

Australia's Tertiary Education Quality and Standards Agency (TEQSA) was established in 2011. Its core purpose was "... to protect student interests and the reputation of Australia's [HE] sector through a

proportionate, risk-reflective approach to quality assurance that supports diversity, innovation and excellence” [38]. TEQSA registers all organisations that offer HE qualifications in or from Australia and non-university providers also need to have TEQSA accredit their courses. Registration may be granted for up to 7 years, shorter periods being accompanied by conditions aligned with perceived risks of non-compliance with the Higher Education Standards Framework (HESF). Courses are accredited also up to 7 years. TEQSA outlines its regulatory philosophy as being “[i]n keeping with contemporary trends in quality assurance and regulation” [39]. Its interpretation of the Ayres and Braithwaite [1] responsive regulation pyramid is summarised at Figure 3 below.

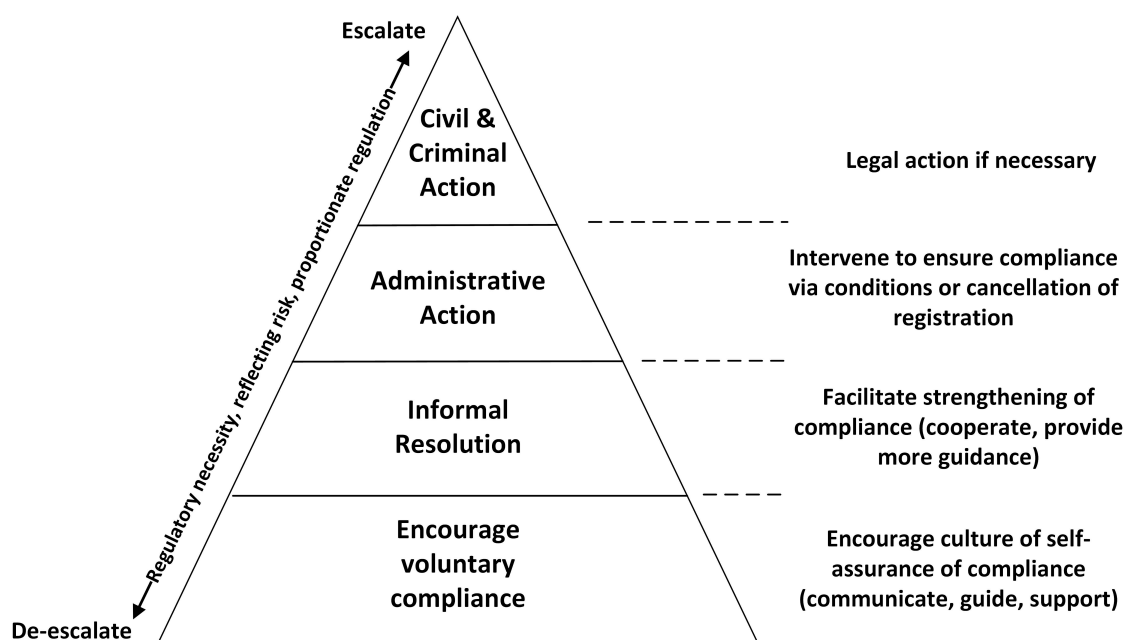


Figure 3. TEQSA’s interpretation of Ayres & Braithwaite’s [1] responsive regulation pyramid.

In 2013, shortly after TEQSA’s inception, Professors Lee Dow and Braithwaite were asked by the Government to conduct an independent review to consider how regulatory burdens on HE providers could be reduced following concerns raised by the sector about TEQSA’s approach and effectiveness. Their report raised issues that are still relevant to this exploration of the evolution of regulatory approaches in HE. They suggested the regulatory challenges in HE were threefold. First, conversations and collaborations needed to be facilitated across networks and institutions to identify points of friction and tension that were holding back HE providers “... seeking to move forward in sensible ways” [35]. Second, they suggested that stakeholders needed to have a shared commitment to mitigate risks to the sector’s reputation internationally. Third, there needed to be a shared understanding as to how a provider might enter the HE field, based on trust and confidence that criteria would be implemented fairly and reasonably. Their report

might be interpreted as supporting a form of CSR by the regulator and regulatee that values a more collaborative approach based on informed consent, in turn demonstrating how regulatory measures are serving the public interest.

Becoming Virtuous Actors in the Regulatory Process

TEQSA acknowledges that the bottom two levels of the pyramid should encourage and facilitate voluntary compliance with the HESF through communication, guidance and support. Its intention does not mention a 'light touch' approach but rather a "... 'variable-touch' regulation, in which regulatory intervention is no greater than is required to achieve a necessary regulatory purpose ... [through leveraging] ... respectful regulatory partnerships, with individual providers and with the sector overall" [39].

Tools used for communication, guidance and support are listed in *Our approach to quality assurance and regulation* [39] and include: regularly updated guidance notes on TEQSA's "interpretation and application of selected areas of the HES[F]"; case managers who engage with HE providers to assist with making applications and interpreting, clarifying and resolving issues; consultations with the sector to "... raise issues, explain new directions or policies and gather feedback to improve [TEQSA's] quality assurance and regulatory activities"; a 'provider portal' for developing and submitting applications; and, transparency of outcomes through a free and searchable public register of HE providers which includes TEQSA decisions.

Consultations with the sector are undertaken when changes are anticipated, employing a transparent and iterative approach. Regulatees are expected to manifest capability to self-assure compliance by leveraging multiple information sources and diverse sectoral perspectives and practices. Such experience is intended to diminish inappropriate expectations that TEQSA will provide definitive instruction or advice on compliance behaviour. This approach to developing self-regulatory capability is reflected also in the provision of workshops, e.g., at annual conferences, to share developments in the HE sector, provide opportunities for feedback and exchange of views within the sector, and facilitate a better understanding of regulator rationales and guidelines.

Whilst the goal is to support cultures of "self-assurance of compliance", there remain significant challenges for both regulator and regulatee in achieving agreed perspectives around collaborative practice, given the diversity of responsibilities and stakes in the regulatory process. TEQSA's regulatory approach [39] describes a graduated escalation up the regulatory pyramid, identifying a series of regulatory actions; from providing education and support, through communication of concerns in writing and requesting information, to imposing conditions, approving reduced periods of registration and cancelling registration. Limited

attention is given to the de-escalation process which appears to be based largely on revocation and variation of conditions imposed through satisfactory reporting on action taken to meet HESF standards.

The pyramid of sanctions (summarised at Figure 3 above) indicates escalation/de-escalation is based on principles of regulatory necessity, reflecting risk and proportionate regulation, with apparently limited consideration of the pace or processes whereby regulatees might achieve voluntaristic self-regulation at the base of the pyramid. Psychological challenges in the model were raised earlier by Ayers and Braithwaite [1]. Potentially the act of applying sanctions can impact the spirit of responsive regulation in two ways. In a positive frame organisations might recognise their perceived failure to meet standards and interpret this outcome as part of their learning process, addressing capability gaps appropriately. Alternatively, it also can feed a more negative culture of “treading water” aimlessly if the process whereby sanctions are imposed is seen as unfair and adds pressure on the business model of an HE provider. Resourcing and building internal capacity could be seriously impeded by the financial and reputational costs associated with sanctions. This outcome can have potential deficits for all stakeholders involved, as costs for the regulator are also increased. Failure to achieve a healthy balance between accrual of capability, protection of stakeholder interests and costs incurred by both parties can thus have deleterious effects for all stakeholders and reduce confidence in the process.

Thus, stakeholder engagement and collaboration appear fundamental to dynamic perceptions of risk and responsibility that influence escalation and de-escalation of sanctions. Tyler [40] demonstrates that people’s perception of how they are treated influences compliance with law and regulation, more so than whether those in authority decide in their favour. Braithwaite adds that “when individuals are treated with procedural justice they are more likely to be open to being persuaded that the laws are legitimate and are important to follow” [41]. A key issue here is whether such intervention impedes development towards autonomy, given that in the longer term, pro-active involvement of organisations with regulators is necessary to achieve adaptation and innovation of regulatory standards in “regulatory capitalism” [28].

A More Holistic Appreciation of Economic, Social, Environmental and Governance Challenges and Opportunities

Thus, a responsive regulatory framework requires TEQSA awareness of integrated business models and strategies of HE providers, through relevant research, information gathering and analysis of risk. TEQSA’s Corporate Plan 2019–23 states “TEQSA must be prepared to provide timely and effective responses to issues that have the potential to affect the sector’s quality as and when they emerge” [42]. This implies that the regulator needs information to assess how regulatees experience the HE environment and the regulatory framework as a basis for maintaining

the risk assessment framework (RAF). The RAF monitors key aspects of a provider's operations related to four key areas of risk assessment: regulatory history and understanding; students' load, experience and outcomes; academic staff profile; and, financial viability and sustainability. Specific indicators are published for each of these areas, only one of which (other identified risk) appears to offer potential for identifying contextually relevant rather than generic risk. The Corporate Plan 2019–23 indicates ongoing revision of the RAF in consultation with providers as well as a review of "... the scope, efficiency, currency and availability of data collected and used for risk assessments" [42].

However, TEQSA's Annual Report 2018–2019 [43] provides little detail highlighting the challenges of engagement with HE providers, other than problems with timeliness of responses to applications being exacerbated by staff turnover. A significant recruitment drive in 2018–19 is flagged (and associated staff training) involving almost half of its workforce. This might be of concern in a workforce requiring highly skilled analytical and relationship building capability. The Corporate Plan notes however that "... opportunities [for increased stakeholder engagement] have included the annual stakeholder survey, meetings with peak bodies, forums with groups of providers, visits to and from individual providers and, not least, the annual TEQSA conference. This plan commits the agency to continued engagement with the sector and to respond to sector feedback on our performance" [42].

The Corporate Plan discusses the major objective of providing advice and information to inform decisions about the appropriateness and quality of HE. It indicates a commitment to "... develop new regulatory policies for the assessment of compliance in consultation with relevant stakeholders" [42] as a result of significant changes in the HE sector occurring "... to meet the needs of future workplaces [that] are stimulating continued innovation in the use of a range of pedagogies, such as: block delivery; combined VET and [HE] delivery; the expansion of micro-credentialing; blended, online and disaggregated learning; and the development of new fields of study" [42]. The massive surge towards online delivery in response to lockdowns associated with COVID-19 will no doubt give online learning a higher priority. Further, TEQSA suggests "The increasing need for stakeholders to access timely and relevant information for decision-making requires enhanced reporting ... to reflect stakeholders priorities and the insights of the agency in relation to evolving trends in risk and quality" [42]. The implications for shifts in culture and internal capability to achieve new levels of stakeholder engagement are not explained.

Creating Engagement, Trust and Commitment to the Principles of Responsive Regulation

Lee Dow and Braithwaite [35] argue that trust in the relationship between regulator and regulatee depends on sharing key objectives, the

purpose of regulation being to help ensure risks and challenges to achieving such objectives are addressed. Ivec and Braithwaite [36] suggest that as well as economic principles supporting the discouragement and attractiveness of choices, some important social principles are needed including educating about expectations, praising and encouraging efficacy and ability, persuading to highlight value and encourage willingness to comply, and socialising through material and social rewards aimed at abiding by the law.

As noted earlier, a potential challenge to building trust in the TEQSA model appears to be related to the processes of escalation and de-escalation of sanctions. TEQSA identifies that the process is governed by; regulatory necessity, reflection of risk and proportionate regulation, these judgements being made by TEQSA (considering advice of external experts). As noted above the engagement of regulatees in processes that help them move down the pyramid to voluntary compliance appear to be understated. The pace at which quality judgement and associated capability might be developed by regulatees also seems ambiguous, particularly in light of escalation and de-escalation processes. Similarly, case managers appear to have an ambiguous and challenging role in providing assistance whilst stopping short of interpreting the standards for regulatees, a challenging task made more so perhaps by the goal of full cost recovery outlined in TEQSA's Corporate Plan 2019–23 [42].

So how can a fluid transition be achieved between the encouragement and facilitation of voluntary compliance and a shift towards intervention to ensure and supervise compliance, without trust being broken? Such fluidity appears to require regulatees to have confidence that in processes of 'administrative action' undertaken, the regulator and its external experts operate on a full and shared understanding of the regulatee's situation and its stage of capability development. This is a difficult goal that relies on outsourcing and partial insights to be subsequently integrated through bureaucratic process. This would potentially entail enhanced skills and capability across all stakeholders, as well as a stakeholder culture that values openness to feedback and is capable of educating and informing other stakeholders to reach a common understanding around recommendations and interventions.

Shaping Shared Stakeholder Perspectives on Problems, Risks and Continuous Improvement

A more holistic and shared appreciation of risks to HE providers and the sector is also mooted in TEQSA's Corporate Plan 2019–23 which indicates ongoing revision of the RAF in consultation with providers [42]. This outcome appears to be fundamental to the gaining of mutual trust in process towards the shared objectives of protecting student interests in a highly volatile market, such as in the wake of the 2020 COVID-19 pandemic, and protecting the quality of HE and its reputation internationally. Although it has been suggested that it is in the interests of

both regulator and regulatee to embrace these issues [35], it is inevitable that priorities will differ around the nature of risk in business planning.

Thus, demonstrating critical skills and creating opportunities for dialogue are essential in shaping stakeholder perspectives concerning the processes of registration and accreditation. This seems to be an area that challenges both regulator and regulatees significantly, yet receives little recognition in the regulator's published materials and the communications of private HE industry bodies. IHEA (Independent Higher Education Australia) and ITECA (Independent Tertiary Education Council Australia) both focus on providing advocacy and support for their members through engaging with TEQSA over regulatory issues, staging seminars in which salient issues are discussed, and, offering professional development programs for their members. However, their broad representative advocacy-based model may be strained in supporting development of critical, reflective and collaborative mindsets and skillsets underpinning interactive engagement to co-create emergent understanding in both the registration and accreditation process, and in the continuous improvement of governance to support collaborative culture.

As noted earlier, a trigger for loss of confidence in the system appears to be the point of transition between educative support and administrative action by the regulator in the form of proposed conditions. At this stage, responsibility for meeting standards appears firmly placed with regulatees requiring appropriate and sophisticated internal governance and management capability to shape appropriate responses, and a capacity to provide a holistic narrative within a bureaucratic template. The philosophy of TEQSA's regulatory regime highlights that escalating beyond educative intervention reflects "[p]roportionate, differentiated approaches [that] enable providers of different sizes, business models and operational histories to operate in Australia's diverse [HE] system, provided they meet and continue to meet regulatory requirements" [39]. Case managers, apparently experiencing significant turnover, appear to take responsibility for this complex relationship building and interpretation of the RAF for regulatees, a complex challenge for administrative staff also required to demonstrate efficiencies whilst developing skills to collaborate with regulatees more comprehensively.

Acknowledging the Regulatory Regime Provides for Stakeholder Engagement Relevant to Achieving Corporate Sustainability Objectives

Thus we return to our concern that CSR could include more direct responsibility in the responsive regulatory process. Published materials cited here illustrate how the Australian HE sector faces challenges in developing collaborative practices between regulators and HE providers. At the same time we have indicated the significance of such collaborative

practice for both regulator and regulatee in achieving sustainable business objectives at various stages of regulatee development in complying with threshold standards. Processes and practices associated with de-escalation of non-compliant behaviour seem to be a particular challenge once a culture of active intervention and supervised compliance has been elicited.

However, there is evidence that TEQSA is taking significant steps to prevent first time applicants from escalating towards non-compliance, i.e., creating appropriate expectations and culture in the early stages of preparation for registration and accreditation. These are described below as efforts to scope and initiate sustainable practice and shape a stakeholder culture. However, significant challenges remain concerning those providers who experience escalation and de-escalation, given the implications of sanctions and interventions for capability building to support a culture of self-assurance of compliance.

Creating a Stakeholder Culture to Support Responsive Regulation

TEQSA's 2018–19 Annual Report discloses that an internal review of the quality of applications revealed consistent failings by applicants to “meet multiple standards relating to corporate and academic governance ... [and] common issues relating to financial sustainability and viability and academic leadership” [43]. As a result efforts are now made to engage a prospective HE provider to “talk through areas of focus and improvement, and to help prospective entrants better understand and navigate registration requirements”, thus indicating increased efforts to demonstrate sustainability and facilitate effective self-assurance of compliance at the base of the responsive regulatory pyramid.

TEQSA's Corporate Plan 2019–23 [42] describes a goal of stakeholder engagement as purposeful, collaborative, informative, transparent and respectful, gaining clarity over objectives, working in partnership, and respecting the expertise, perspectives and needs of stakeholders. It specifically nominates that achieving and maintaining effective self-assurance practices underpins their communication and co-operation efforts, implying that creating a stakeholder culture is an important goal. A broad range of ongoing consultation arrangements with key sector bodies and student organisations is also identified.

Thus, it might be argued that steps are being taken to support a culture of responsive stakeholder relationship with the regulator. However, a trigger point for potential damage to this partner-based relationship appears to arise when regulatees are unsure that the process of review by TEQSA and its external advisers allows adequate familiarity with the narrative of the HE provider when presenting its case within the standard template. The challenge here is for adequate process to support analysis of complex stakeholder responses. The leap from verbally communicating rationales and issues to demonstrating a business case

consistent with meeting threshold standards, particularly in highly regulated environments, appears to be a significant governance challenge for many HE providers. This appears to require capacity for integrated thinking around policy, process and cultural development within the regulated entity.

Taking short-cuts to capability development by HE providers, such as over-dependence on external consultants, constitutes another challenge that is recognised, it appears, by TEQSA from a risk perspective. It has been noted above that addressing such issues to create more credible responses from regulatees would be assisted by the development and communication of an increasingly integrated and consistent rationale around planned activities and outcomes. Thus, this environment could provide fertile ground to discover new forms of CSR around partnership-based approaches to regulation that potentially accommodate more sustainable governance through effective collaborative practice across stakeholders.

This seems in accord with Lee Dow and Braithwaite's [35] advocacy that in order to achieve appropriate developments in stakeholder culture, regulators should clearly demonstrate their intention to steer the flow of events rather than row the boat. They conclude that it is ...

Not enough to have regulation crack down on the laggards. It is equally important for the regulator to encourage as many as possible to be leaders moving 'beyond compliance', that is, to embark on a program of continuous improvement. Without this dual regulatory agenda, regulators can become prescriptive and oppressive, holding back developments that are in the public interest and that are being proactively encouraged through other regulatory forces. In the [HE] domain, a large investment of resources in checking and proving that threshold standards are met can mean that there is little energy or appetite for new exciting initiatives that go beyond compliance, made worse by the fear that trying something out of the ordinary will risk the ire of the regulator [35].

APPLICATION OF THE RESPONSIVE REGULATION MODEL TO EXPLORE THE MARITIME INDUSTRY

The Australian Maritime Safety Authority (AMSA) is the national agency responsible for maritime safety, protection of the marine environment, and maritime aviation search and rescue. AMSA's vision of "safe and clean seas, and saving lives" [44] highlights its responsibilities for environmental sustainability and social responsibility, whilst being mindful of its regulatory impact on the economic sustainability of some of the nation's most volatile commercial sectors, such as the Australian fishing industry.

In July 2018, AMSA assumed national regulatory responsibility for domestic commercial vessels from state maritime safety agencies.

Domestic commercial vessels range from passenger ferries to fishing trawlers and even hire-and-drive motor boats. AMSA now faces the challenge of creating a regulatory relationship with the commercial vessel sector that is responsive, streamlined, and collaborative [45].

Additionally, the Australian Government's RPF [23] highlights the imperative for AMSA to reduce regulatory burden, and subsequent cost, for the domestic commercial vessel sector. This includes the Australian fishing industry. The Council of Australian Governments' 2009 agreement to implement nationally consistent maritime regulations acknowledges its intention to achieve substantial cost savings in maritime regulation. The Productivity Commission's draft report on National Transport Regulatory Reform [46] acknowledges that regulation, particularly prescriptive regulation, involves costs, and that these costs must be balanced against economic performance.

However, there have been 62 fatalities associated with domestic commercial vessels between July 2013 and June 2019. Of these, 45 per cent occurred on fishing vessels, while 35 per cent involved passenger vessels [46]. In terms of maintaining its social licence to operate, this fatality rate is unacceptably high and calls for urgent action to improve safety. As such, there is intense pressure for continued reduction in regulatory cost combined with a societal expectation of improved safety and environmental protection within the maritime domain. It is expected that AMSA, as its regulatory processes mature, will effectively transition from its historically highly prescriptive regulatory approach to a more dynamic and anticipatory one [46]. The above factors prime the organisation for the integrated thinking around economic, social and environmental outcomes within the industry sectors it regulates.

Seafood Industry Australia (SIA), the nation's peak industry body that encompasses the Australian fishing sector, states its intention to present to the Australian consumer a premium product in its domestic seafood that is sustainably obtained [47]. This expression of CSR involves both environmental sustainability as well as the safety and wellbeing of those involved in its supply chain, i.e., the fishers. Negative social reaction to accidents and fatalities in the fishing sector is evident in the public's reaction to the fatalities on board the Fishing Vessel *Dianne*, a dive boat which capsized off the Queensland coast, killing six crew and leaving one survivor to cling to its upturned hull before the vessel finally sank [48]. Dalton, in his news article on that tragedy [48], states "To see *Dianne* is to see a commercial fishing industry upturned and bobbing in the true dark of what Deakin University anthropologist Tanya King calls an 'industry-wide health crisis'". Clearly, fisher safety is a concern close to the core of the Australian seafood industry's social licence to operate.

AMSA, as the fishing sector's marine safety regulator, is similarly motivated by maintaining a social licence to operate in its regulatory approach. As described earlier, it is under intense pressure to balance the cost of regulation with measurable improvements in maritime safety.

Responsive regulation [24] appears to have potential to provide a cost effective and impactful means of achieving these outcomes given its focus on maximising self-regulation. AMSA has the capacity to simply exercise its enforcement powers to deter, punish and incapacitate those actors who do not comply with its maritime regulations. However, it also demonstrates awareness that it requires a social licence as a responsive and consultative regulator that engages and collaborates with the fishing sector. The responsive regulatory framework suggests that to achieve its objectives, regulated communities should see AMSA as sincerely desiring to partner with industry to yield measurable improvements in maritime safety, whilst being mindful of the economic impacts that regulation entails.

Murray, Haynes and Hudson [49] note that in achieving CSR and sustainability “... collaboration may pose some degree of complexity, because whilst collaboration often involves parties with similar interest or stake in the outcome of endeavours, it need not always involve parties with shared values, shared goals or even the same interests and objectives”. However, AMSA and SIA appear to have strong common ground regarding improved safety practices, in terms of social licence and economic sustainability performance. Both parties have signaled, to each other and to all stakeholders that they are keen to pursue collaborative and responsive regulation. Both have expressed their intention to align commercial, safety and environmental protection aspects of the industry in sustainable ways. However, to enact responsive regulation, both regulators and the regulated community might be particularly mindful of the ways in which their intentions are interpreted by other stakeholders.

Creating Mutual Understanding to Optimise Integrated Economic, Social, Environmental and Governance Outcomes

Responsive regulation theory suggests that AMSA can best achieve its aims of minimising regulatory costs whilst maximising safety and environmental protection by transitioning to a responsive, dynamic approach founded on collaboration with its regulatory stakeholders. However, the regulatory landscape within the domestic commercial vessel sector is complex and dynamic. In order to demonstrate procedural fairness and transparency whilst maintaining the flexibility required to regulate, AMSA [45] has published a policy outlining “compliance and enforcement options” as well as describing “when use of each option is appropriate”. In this way, AMSA is able to employ “a range of responsive enforcement tools that escalate in severity as the need arises”. These tools range from improvement notices and directions through to suspension of certificates and prosecution.

Monitoring is conducted by AMSA officers and a range of delegated marine inspectors including state police officers and local marine safety officers. It can take the form of audits of operations, inspection of an

operator's vessel(s), and investigations into identified compliance breaches and marine accidents. Monitoring also involves follow-up on remedial actions required by the operator as an outcome of inspections, investigations and audits. Enforcement tools range from guidance and warnings through to prohibitions, suspension of certification, civil penalties and prosecution [45].

However, this range of enforcement tools is balanced with "compliance measures such as communication and education activities, timely provision of information and guidance [and] persuasion" [45]. These can be seen as one-way, top down means of communication. AMSA goes on to identify "cooperative assistance and collaboration" [45], suggesting two-way communication between the regulator and the regulated community. This ensures AMSA's regulatory approach leverages feedback from industry and helps "regulated entities to voluntarily comply with the law" [45].

Similar to TEQSA's choice of variable regulatory response, AMSA's compliance and enforcement policy states that these measures do not need to be used sequentially, but are determined by factors such as the severity of the issue, the culpability of the duty holder, the motivation of the duty holder and the need for deterrence. As such, AMSA's compliance and enforcement approach can be seen to mirror the Braithwaite responsive regulation model in its intent and in its structure, with a clear hierarchy of regulatory responses ranging from education/collaboration, deterrence, and punishment/incapacitation. The monitoring and enforcement options, consistent with Ayres and Braithwaite's [1] responsive regulation pyramid, can "immunize" its collaboration and engagement approach against recalcitrant regulatees who may seek to game the system and even give the appearance of engagement in additional CSR activities while continuing intentional non-conformance. As such, AMSA employs a responsive and nuanced approach to manage regulation in complexity.

Creating Engagement, Trust and Commitment to the Principles of Responsive Regulation

As AMSA's CEO, Mick Kinley, stated in the Compliance Strategy [50], "Implementing this strategy will require a partnership between AMSA and our regulated community because we cannot achieve our aim without the support of others". In 2019, AMSA further engaged with the fishing sector by developing and delivering a national series of Safety Management System (SMS) Workshops. All domestic commercial vessels in Australia must have a documented SMS that contains twelve regulatory elements. However, rather than focusing solely on these regulatory requirements, the workshop approached the SMS from the business perspective of the fishers, with the theme of "making your SMS work for you" [51]. The workshops were designed to be participative, discussion-based and focused on integrating safety and economic

outcomes, rather than presentational and focused primarily on satisfying regulatory requirements. The workshop contained a module on “keeping your SMS alive”, which generated practical advice on ensuring their SMS’s remained an ongoing, dynamic system that kept people safe. As such, the workshop design aimed to be collaborative, sensitive to commercial needs, and sustainable.

Whilst AMSA was extending this participative and commercially focused overture to the fishing sector, the fishing sector was preparing to launch a CSR initiative of its own. In October 2019, SIA, the peak body of the Australian fishing and aquaculture industry, launched “Our Pledge” [47], in which they promise to:

- Actively care for Australia’s oceans and environment and work with others to do the same.
- Value our people, look after them and keep them safe.
- Respect the seafood we harvest and the wildlife we interact with.
- Be transparent and accountable for our actions.
- Engage with the community and listen to their concerns, and
- Continually improve our practices.

At its official launch, this pledge had more than 120 signatories. It is acknowledged that SIA’s pledge has only recently been launched. Simultaneously, cases have been brought to attention in the seafood sector of corporations and industry bodies engaging in “greenwashing” [52], or the practice of making unsubstantiated claims about a product, service or brand to appear more environmentally friendly or socially responsible than it really is. However, there is no reason to doubt the aspirations of the SIA pledge and to perceive it as an aid to developing a culture of CSR that can shape industry values more conducive to stakeholder engagement and responsiveness. Again, this CSR initiative appears structured to achieve strategic outcomes for the sector collaboratively.

Shaping Shared Stakeholder Perspectives on Problems, Risks and Responsive Regulation

SIA’s Pledge, and AMSA’s compliance and enforcement policy and SMS workshops, represent an order-of-magnitude step towards the dynamic and anticipatory regulation described in the Productivity Commission’s report [46]. The first two bullet points of the Pledge closely parallel AMSA’s vision of “safe and clean seas, saving lives” [44], which highlights the common ground between the regulator and peak industry body to embark upon responsive regulation. Additionally, there are parallels between the Pledge’s commitment to collaboration and AMSA’s compliance and enforcement policy, potentially paving the way for these parties to co-create safety and environmental protection in the fishing sector as a sustainable partnership. This is likely to result in significantly

greater improvements and efficiencies than either party could achieve acting alone.

A key incentive for responsive regulation and collaboration between these parties is the fact that far too many people die or are seriously injured in the Australian fishing industry. This reality makes for a compelling ‘burning platform’ for adopting the Braithwaite model in the regulation of the Australian fishing industry. Maintaining social licence to operate appears to play a key role in the motivations of both parties, shaping terms of engagement. Not only is there an occupational health and safety risk for fishers at sea, but there is a societal risk if both parties are not perceived to be working towards mitigating this risk in earnest.

Accepting Drivers of Escalation and De-Escalation through a Culture of Mutual Learning

It is important to note that, while AMSA is keen to educate, consult and collaborate with its regulated communities, it still retains the means and commitment to deter, punish and incapacitate non-compliant and recalcitrant operators in accordance with its compliance and enforcement strategy. AMSA’s Compliance and Enforcement policy [45] states “AMSA recognises that both compliance mechanisms and enforcement mechanisms are necessary to provide an effective and flexible regulatory system. Accordingly, AMSA will adopt the approach most likely to promote the objectives of the maritime safety legislation, including by encouraging voluntary compliance”. AMSA reflects Ayres and Braithwaite’s [1] responsive regulation pyramid in its approach to compliance (see Figure 4 below). Its model includes attitudinal and behavioural indicators for each level of regulatory response, as well as the corresponding approach, actions and tools on the part of the regulator. Most noticeable is the indicator of cost from each level of regulation, which appears to be shared by both regulator and regulatee.

%	Status	Attitude	Behaviour	Approach	Action	Tool	Cost
High ----- Low	Voluntary compliance	<ul style="list-style-type: none"> • Willing to do the right thing • Committed 	<ul style="list-style-type: none"> • Compliance oriented 	<ul style="list-style-type: none"> • Make it easy 	<ul style="list-style-type: none"> • Guide and support 	<ul style="list-style-type: none"> • Compliance checks • Information 	Low ----- High
	Accidental non-compliance	<ul style="list-style-type: none"> • Trying to do the right thing but not always successful • Careless 	<ul style="list-style-type: none"> • Attempting to comply 	<ul style="list-style-type: none"> • Help to comply 	<ul style="list-style-type: none"> • Educate and provide feedback 	<ul style="list-style-type: none"> • Audits • Workshops • Notices 	
	Opportunistic non-compliance	<ul style="list-style-type: none"> • Not wanting to do the right thing • Resistant 	<ul style="list-style-type: none"> • No sign of intention to try to comply 	<ul style="list-style-type: none"> • Deter by detection 	<ul style="list-style-type: none"> • Correct behaviour according to severity 	<ul style="list-style-type: none"> • Monitoring • Inspections • Notices • Infringements 	
	Intentional non-compliance	<ul style="list-style-type: none"> • Decision to not comply • Disengaged 	<ul style="list-style-type: none"> • Deliberate intention not to comply 	<ul style="list-style-type: none"> • Use the full force of the law 	<ul style="list-style-type: none"> • Deter by punishment 	<ul style="list-style-type: none"> • Investigation 	

Figure 4. AMSA’s interpretation of Ayres & Braithwaite’s [1] responsive regulation pyramid

In the AMSA regulatory approach there is the potential for regulated actors to realise that effective safety is good for their business and can be integrated with their commercial imperatives as economic sustainability performance. This requires a level of consciousness-raising and engagement that goes beyond mere education on regulatory requirements, as was attempted by AMSA in the Safety Management System workshops [51].

At this level of understanding, actors are seeking to integrate safety and commerciality, rather than trade between them; asking themselves “What can I get out of doing this?” as opposed to “What can I get out of doing?”. This can represent a more sustainable and integrated mindset for regulatees, because a critical threshold in sensemaking has been achieved—safety is not a trade-off, it can be good for business if integrated effectively.

The focus at this level of responsive regulation is on competitive advantage through integration of economic, human and environmental sustainability [53] rather than purely the minimisation of regulatory cost. This approach is more nuanced and accommodating of complexity than mindsets that trade between safety and efficiency on a contingency basis [54]. Actors operating with this level of awareness of the benefits of regulatory compliance would appear less likely to drift into levels of regulatory recalcitrance, potentially achieving a sustainable threshold of maturity in maritime safety.

Acknowledging the Regulatory Regime as Relevant to Achieving Corporate Sustainability Objectives

A key feature of responsive regulation is to perceive risk holistically, and as a shared phenomenon between regulator and regulatory stakeholders alike. AMSA is pursuing this goal by establishing regional safety committees that feed into regulatory development and organisational planning.

Additionally, AMSA is formulating a ten-year regulatory reform agenda (2020–30) that emphasises stakeholder engagement and collaboration, not only as an element of its strategy, but as an input into its regulatory reform regime. The intention is to share these inherent risks with its regulated stakeholders, applying a holistic approach that seeks to balance the complex tensions between economic, human and environmental sustainability.

TENSIONS AND CHALLENGES IN MARITIME SAFETY

Creating a Stakeholder Culture

Implementing responsive regulation is not solely a matter of altering the quality of engagement with external actors. It calls for a deep alignment within the organisation (both regulator and industry body) on a cultural level to enable the required shift in behaviours. Incongruence

between the organisation's espoused regulatory intentions and its internal culture risks achieving desired stakeholder interactions and may have disastrous impacts on critical inputs such as trust and cooperation.

AMSA's culture has a strong maritime orientation. Roberts [55] suggests the culture of seafaring leadership can be described as autocratic, self-sufficient and somewhat paternalistic. Behaviours such as effective listening and collaboration with stakeholders do not occur naturally in this culture. The cultural tendency towards self-sufficiency would incline the organisation to develop regulatory solutions on its own rather than in collaboration; while the tendency towards patriarchal autocracy may incline the organisation to "know what is best" for its stakeholders. This problematises responsive regulation as proposed by Braithwaite [24].

Additionally, the culture of the Australian fishing sector does not appear to be entirely aligned to a collaborative, co-creationist approach to improving safety. In a survey of 219 Australian fishers, Brooks et al. [56] concluded "Current culture and behaviours of the industry demonstrate that fishers separate their behaviours in regard to keeping safe as they assess it, from the activities (paperwork) they undertake to maintain compliance with the regulations. They do not see these two activities as being closely related." Additionally, the survey found that a proportion of the fishing sector actors were "recalcitrant offenders", but that even those with a positive view towards safety had deep reservations about the way that safety was managed in the industry. As such, current cultural perspectives do not appear to be aligned with the aims of responsive regulation.

Transitioning from Consulting to Collaboration and Co-Creation

AMSA's current approach to responsive regulation appears to be more aligned with consulting their regulated community rather than collaborating with it, as described in the Compliance and Enforcement policy,

AMSA places strong emphasis on engaging with, educating and assisting those with obligations under the maritime safety legislation to meet their obligations. AMSA chooses to administer the maritime safety legislation by placing emphasis on a proactive approach to encourage voluntary compliance through the provision of general guidance, education and training... AMSA will listen, respond and provide information and opportunities for individuals and groups to ask questions and to discuss issues of concern [45].

This could be described as a benign unitarist approach where those impacted by the regulation will be consulted and educated on AMSA's agenda "as an ethical philosophy made up in advance" [25]. It does not yet appear to align with the collaborative, pluralist co-creation envisaged by Godfrey and Lewis [25]. Therefore, while AMSA is making admirable

progress towards the collaborative model illustrated at Figure 2, a development opportunity is apparent for achieving collaboration that would drive co-creation of maritime safety and help develop a set of competencies to better achieve this transition.

CONCLUSIONS

The strong parallels between the diverse examples of the HE and maritime safety sector highlights the value of Ayres and Braithwaite's [1] responsive regulation model. In exploring progress towards more responsive regulation, examples from the two sectors reveal complex and dynamic environments where breaches of regulation can result in significant negative outcomes for stakeholders. These risks are around assuring the quality of HE whilst protecting students and the reputation of the HE sector, as well as maintaining safety and environmental protection within the maritime context. There exists significant pressure to reduce regulatory burden and compliance costs in both cases. Both sectors are typified by extreme diversity: in the HE sector through diverse business models at various stages of development in complying with TEQSA's HESF; and, in the maritime sector by the vast range of commercial vessel types operating across Australia. Both sectors are experiencing significant change, particularly from increased technology and innovation as well as increased market volatility and uncertainty from unanticipated pressures including the recent effects of the COVID-19 pandemic. These factors, in concert, appear to highlight the value of more responsive regulatory approaches within both sectors that require higher degrees of trust, collaboration and shared risk to contend with industry change, complexity and sometimes paradoxical tensions.

Both sectors have adopted a risk-based approach that shifts ownership of risk assessment and mitigation towards the regulatees, resulting in an outcomes-based rather than prescriptive regulatory approach. Indeed, an increasing proportion of the interpretation, assessment and risk mitigation falls upon regulatees, as commercial actors (or increasingly commercially driven actors in the case of HE providers) experiencing pressures for integrated ESP and ESG outcomes. The effectiveness and efficiency of regulation under these circumstances presumes greater engagement and contribution from virtuous and self-regulating actors and a reduction of recalcitrant or opportunistic actors. As such, the regulators within the HE sector and maritime safety sector would appear to benefit from engaging stakeholders and leveraging emergent community attitudes towards responsive regulation in ways that shape corporate sustainability behaviour.

Common challenges exist within the two sectors, even though there are specific sectoral differences and stages of development in establishing more sustainable regulatory partnerships. A common and fundamental challenge to encourage more voluntary regulation stretches the notion of "mere compliance" to more pro-active and collaborative

regulatory behaviours. Whilst there are clear intentions of TEQSA's shift towards a more responsive regulatory approach, challenges remain. For example, processes for de-escalating non-compliant behaviour whilst maintaining motivation and trust after direct administrative intervention might be given more attention. Similarly, developing administrative capability to engage regulatees in pursuit of regulatory partnerships might be strategised and operationalised more clearly.

Although AMSA has published its compliance and enforcement strategy and policy to describe its approach to responsive regulation, the culture in the sector as a whole still appears largely autonomous in philosophy, potentially presenting specific challenges to collaboration and regulatory partnerships. However, key developments in the fishing industry illustrate the potential for more collaborative CSR practice. SIA's "Our Pledge" indicates a commitment to more integrated environmental, social and commercial outcomes, demonstrating 'virtuous actor' intentions in the regulatory process.

There is some evidence that both TEQSA and AMSA are making progress in their efforts to move towards sustainable governance in their dynamic environments via collaborative engagement with their regulated communities through greater openness, information exchange and shared perceptions of risk. Both have the potential to foster interactive spaces where regulatory power is exercised in more nuanced, complex ways; where reflection can occur around ethical outcomes; and where new synergies between ESP and ESG can be created. Nevertheless, there remains significant space for continuous improvement regarding responsive regulatory approaches, as evidenced by the tensions and challenges that remain within these respective regulatory contexts. However, both organisations appear to have employed "a repertoire of regulatory tactics" [27] to assist compliance and enforcement while collaborating with regulatees and other regulators, potentially shaping and eliciting more effective approaches to sustainable governance and corporate sustainability.

We have critiqued and augmented Ayres and Braithwaite's [1] responsive regulatory model to incorporate forms of mutual learning between regulators and regulatees, in order to better appreciate the nature of more voluntaristic engagement. We suggested and exemplified conditions and cultures that might enhance or diminish collaborative practice, a more holistic appreciation of risk and increased corporate sustainability.

Insights from the model at Figure 2 embellished by published commentary and critique of TEQSA's and AMSA's regulatory approach suggest opportunities for practicing unique skillsets that may be rare within regulatory agencies, given their historical basis in command-and-control regulation. Developing skills to facilitate coordination, collaboration, systems integration, and sensemaking would appear important. Without these skills, attempts at the highly

collaborative responsive regulation we have discussed seems to be less likely. Fishman [57] commenting on the UN Global Compact-Accenture Strategy's CEO Study notes that perceived impediments to collaborative partnership include three inter-related factors; capability gaps, resource constraints and low risk appetite by the organisation's governing bodies for new forms of partnership, aspects of which have been identified above.

We suggest that CSR that adopts a minimalist focus on regulatory compliance needs review in order to provide more holistic perspectives and related action to achieve greater corporate sustainability in dynamic and turbulent conditions. Evidence from the two sectors suggests that business and regulators (as protectors of broader community interests) are pursuing levels of collaboration required to meet the challenges of regulatory capitalism. The conceptual framework of stakeholder ethics was introduced as a lens to explore how normative patterns of behaviour are adapted by regulator and regulatee in achieving more sustainable governance and corporate sustainability.

Austin and Seitanidi [58] state that "... at a broader societal level ... [partnership] collaboration may also contribute to welfare-enhancing systemic change in institutional arrangements, sectoral relationships, societal values and priorities, and social service and product innovations, as well as improving the environment with multiple, societal benefits". We suggest that our discussion of responsive regulatory reform as more sustainable governance has exemplified potential benefits from partnership and collaboration in line with such societal benefit.

AUTHOR CONTRIBUTIONS

All authors have contributed equally to this paper.

CONFLICTS OF INTEREST

The authors declare that there is no conflict of interest. All materials used in this paper are available in the public domain. Although DB has previously consulted to TEQSA, offering expert advice on individual applications from HE providers, consulting has not occurred in the area of sustainability, sustainable governance or CSR which are the topics of this paper. BR is employed by AMSA and AMSA are aware of the content of this paper.

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