



INSTITUTE OF
**PUBLIC
ACCOUNTANTS®**

**Submission to
PM&C:
Draft Regulator
Performance Guide**

May 2021

21 May 2021

The Manager
Regulatory Policy Branch
Dept of Prime Minister and Cabinet

By email: deregulation@pmc.gov.au – online submission

Dear Sir/ Madam

Draft Regulator Performance Guide

The Institute of Public Accountants (IPA) welcomes the opportunity to comment on the Draft Regulator Performance Guide.

The IPA is one of the three professional accounting bodies in Australia, representing over 42,000 accountants, business advisers, academics and students throughout Australia and internationally. Three-quarters of the IPA's members work in or are advisers to small business and SMEs.

Overall, the IPA supports the Draft Performance Guide, including the three principles. However, implementation, enforcement and revision also need to be guiding principles. There must be a genuine approach to building trust, risk-based regulation and collaboration and engagement. Paying lip service to these should be called out and attempts made for consistent and genuine application of the principles.

We acknowledge there are pockets of good practice, best practice and excellence and we encourage all stakeholders to take responsibility in striving for excellence at all times.

Our comments appear below and follow the matters set out in the Draft Regulator Performance Guide.

If you have any queries or require further information, please don't hesitate to contact Vicki Stylianou, Group Executive, Advocacy & Policy, either at vicki.stylianou@publicaccountants.org.au or mob. 0419 942 733.

Yours faithfully



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Group Executive, Advocacy & Policy
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Three principles

1. Continuous improvement and building trust
2. Risk-based and data-driven
3. Collaboration and engagement

Overall, IPA agrees with these three high level guiding principles. However, implementation, execution, enforcement and timely revision are also critical to their overall success as guiding principles. There is also a need for consistency across all of government, no matter the size, sector or level of funding of the department or agency.

Need to rebalance

IPA strongly believes there is a need to rebalance with the regulatory pendulum swinging too far in one direction in some cases. That is, the interests of all stakeholders need to be balanced rather than the emphasis being on protecting certain groups or sectors to the detriment of others when this could be avoided by carefully crafting regulation.

An example of this relates to the Australian Financial Complaints Authority (AFCA). In the IPA's submission lodged in April 2021 with the Treasury on the recent review of AFCA, we stated,

A question that arises under the AFCA dispute resolution scheme is whether it is appropriately calibrated as between consumers and financial firms that are themselves small businesses. In considering whether the powers and processes of AFCA are calibrated appropriately, it is necessary to recognise that their operation impacts small financial firms differently to larger members that have the capacity to absorb the costs and time of the EDR processes.

The consultation paper asked, *Is AFCA meeting its statutory objective of resolving complaints in a way that is fair, efficient, timely and independent?*

There has been recent criticism of AFCA acting as advocates for consumers. This was highlighted by Justice Stevenson in *DH Flinders Pty Ltd -v- Australian Financial Complaints Authority Limited* [2020] NSWSC 1960. This judgment further highlighted that AFCA was acting outside its authority.

Other examples include in the financial advice sector, where ASIC's interpretation and application of regulations has resulted in a highly risk-averse sector with dealer groups adding compliance costs to the already high cost of advice. In turn, financial advice has become unaffordable for many consumers. We refer to ASIC CP 332 *promoting access to affordable advice for consumers* for more details.

Collaboration and engagement

An example of where a regulator does not seem to have genuinely listened to stakeholder feedback is ASIC and the industry funding levy model. There has been widespread and serious concern about the levies and the cost impact on regulated entities. ASIC also consults on its own KPIs and metrics for the KPIs and its regulator performance framework. However, in our experience it appears to be the least responsive regulator with which we deal. For example, ASIC has so far failed to explain or justify how levies can increase by up to 160% in 1-2 years even when assessed against its own methodology.

IPA also agrees with the principle of ‘meaningful collaboration’. We contend that this means transparency around what recommendations and ideas the regulators adopted and didn’t adopt from stakeholders, including reasons as to why and why not. Even though this may be time consuming, it would be useful to have a brief stocktake made public of some of the major and minor recommendations along with reasons as to why they were adopted or rejected. At least this could be trialled or if some regulators are doing this already, then it could be templated and extended to other regulators.

Collaboration is very different to consultation and we note the use of the word ‘collaboration’. This implies deeper engagement, for example, co-designing regulation. IPA supports deeper engagement on the basis of collaboration, in addition to consultation.

Innovation and regulation

IPA contends there is a need to overcome the inherent risk aversion and conservatism of regulators. There should be a culture of experimentation and recognition that not every idea, concept or regulation is going to be effective and may need to be removed or tweaked. The IPA Deakin SME Research Centre has recently released its third Small Business White Paper, which focuses on innovation policy and recommends that we undertake ‘policy experiments’. In this regard, regulatory sandboxes and sandpits are good ideas and their use should be encouraged across all of government. It could even be prescribed as a KPI to try and drive innovation and changes in culture.

Combined regulatory burden

The Guide refers to the ‘combined regulatory burden’. We believe this should be given far greater weight in assessing the impact of regulation. Far too often, regulation is made in isolation when in fact the combined regulatory burden can be excessive. This results in regulatory overlap, often with little hope of achieving deregulation. A prime example is the regulatory burden on accountants who provide financial advice and often are also Registered Tax Agents. They are currently caught under the ASIC *Corporations Act 2001* regime; FASEA and its Code of Ethics and other standards and requirements; the Tax Practitioners Board *Tax Agent Services Act 2009* regime; the Accounting Professional and Ethical Standards Board regime of standards as members of a professional accounting body; and as members of a professional accounting body they are also subject to the requirements of the Professional Standards Councils and an extremely high and expensive level of regulation. These numerous requirements are not always consistent and in some cases quite contradictory, which makes compliance extremely difficult.

This should also take into consideration the combined impact of local, state and territory and federal regulation. This should be done as a starting point and mandatory for all regulation – a type of ‘combined regulatory burden impact statement’.

Regulator communication

There are numerous examples of regulators not communicating with each other, leading potentially to absurd outcomes. We understand the need for confidentiality, however, the overall benefit has to be considered and if it leads to streamlined regulation, then this should be given greater weight. There should also be more interaction between policy agencies such as the Treasury and portfolio

regulators. We believe this has improved over the years and we would strongly encourage this trend.

Other comments

We have also in the past recommended that Australian regulators adopt the EU approach of '**risk-adjusted**' and '**small business first**' approaches to regulation. Numerous papers have been written on these and we encourage all regulators and agencies to consider them.

Regulation Impact Statements and Small Business Impact Statements and a variety of other impact statements are all very useful. However, these need to be properly considered and assessed and not treated as a box-ticking exercise.

IPA fully agrees there should be an **outcomes focus** and using quantitative and qualitative measures, with flexibility in how these are applied.

There is a lot that can be learnt from **other jurisdictions and institutions** such as the OECD, UK, Singapore, US and New Zealand. This is the case not only with respect to what we could be doing but also with respect to what we shouldn't do. For example, the UK laws on anti-money laundering have created a vast and expensive regulatory regime which the UK government has sought to review.

Examples of regulator interaction

ATO

The work done behind the scenes going from a public announcement to full blown implementation of JobKeeper that covered almost half the employed population could not have been achieved without high levels of trust. Treasury/ATO/accounting bodies rolled up their sleeves in a way never done before without the need for confidentiality agreements to get the job done – this was indeed a 'team Australia' moment. On the whole, the Accounting Profession also rose to the occasion and could be a trusted intermediary for the rollout of future Government initiatives.

There were no breaches of confidentiality and we have proven that we can be trusted but it does not take long for the regulators to go back to old habits and we are seeing this surface recently with the treatment around the recent draft guidance around '*Allocation of profits for professional firms*' – back to a more 'cloak and dagger' approach.

COVID and regulation

Many changes were made with a stroke of a pen without lengthy consultation. There was recognition of a trade qualification across borders, virtual meetings for AGMs, electronic signatures and the introduction of more innovations. Whilst COVID accelerated pre-existing trends, it proves that common sense changes need to be done in a more timely manner to reflect technological and workplace changes. We should not have to wait for a crisis to improve flexibility around many existing practices. Again, innovation and regulation should be part of the culture of all regulators and agencies.

What has changed since previous reviews

We refer to the Productivity Commission *Issues Paper: Regulator Engagement with Small Business* [found here](#) back in March 2013, and ask what has changed in the subsequent eight years. Back then we consulted on,

What are the key factors that influence how regulators engage with small business and in what manner are individual factors influential?

What are leading regulator practices in relation to:

- *Monitoring of business awareness and understanding regulations?*
- *Ensuring regulatory decisions and advice are clear, accessible, consistent and timely?*
- *Which regulators most effectively manage risk and what particular strategies have worked?*
- *What factors cause individual officers to diverge from appropriate behaviour?*

We also note numerous other reviews including the 2006 Banks regulatory taskforce review which was broad in its scope. We suggest that a stocktake be taken and an assessment made to determine what progress has been made and what has changed over the course of many years. If this has been done then we applaud this initiative and look forward to reviewing it.