Know your industry; know your regulator

*Katie Miller**

Regulators have a Goldilocks problem — they are expected to have industry knowledge and expertise to be able to regulate effectively, yet they can also be accused of being 'captured' if seen to be too understanding of a regulated population. What is a regulator to do? Being too fatalistic about the likelihood of criticism risks developing a self-referential standard which sets regulators on a course away from public legitimacy and towards increased insularity, defensiveness and, ultimately, a loss of public confidence and social licence. Adopting a responsive, reflexive approach can mean running hot or cold depending on the course of public debate, without any substantive foundation.

Neither approach is sustainable or conducive to public understanding or regulatory compliance. In this article, I propose a path out of the Goldilocks problem by anchoring the relevance of industry knowledge and engagement in the safe harbour of administrative law. My thesis is a relatively simple one: that, in order to perform their functions effectively, regulators need to know their industry; and, equally, for regulation to be efficient, industry needs to know their regulator.

In this article, I provide an overview of the reasons why a regulator needs to know their industry; and, conversely, the reasons why an industry needs to know their regulator. I then connect those needs to administrative law doctrines and values and address some of the potential pitfalls and challenges of regulators engaging with industry. In doing so, I draw on experiences from my professional practice, including racing integrity, police oversight and regulating to protect against the risks of money laundering and terrorism financing.

Know your industry — because the Act requires it

The starting point for any regulator (or anyone who wields public power) is their Act. For some regulators, knowing your industry is required by the Act, either expressly or impliedly. Where an Act confers a decision-making power on an administrative official, it is expected that that official will give 'proper, genuine and realistic consideration to the merits of the case'.[1] The application and requirements of many regulatory schemes turn on questions about the operation, organisation or status of a regulated entity.

For example, whether an entity has obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) ('AML/CTF Act') turns on whether the entity provides a 'designated service'.[2] Understanding which, if any, designated services are being

* Katie Miller is an LIV Accredited Specialist in Administrative Law and a former Deputy Commissioner of the Independent Broad-based Anti-corruption Commission in Victoria. Katie has provided legal services to regulators in the racing, health, food safety and migration sectors as a lawyer with the Australian Government Solicitor and Victorian Government Solicitor's Office. This article is an edited version of a presentation delivered at the Australian Institute of Administrative Law National Conference, Melbourne, 22 July 2021.

1 *Khan v Minister for Immigration, Local Government and Ethnic Affairs* (1987) 14 ALD 291, 292.

2 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) ('AML/CTF Act'), ss 4 and 5, definition of 'reporting entity'.

provided requires a not inconsiderable amount of information about the operation of the entity and its approach to delivering the relevant services. Due to technological innovation in the financial sector, new entities are emerging that provide services in different ways. Subtle differences in how an entity provides a service can have a significant effect on how the law applies to that entity. In order to give 'proper, genuine and realistic consideration' to the exercise of powers in respect of such entities, it is necessary to 'know the business' — the who, what, how, and sometimes even why.

A regulator's exercise of statutory powers will often be conditional on the consideration of certain factors or the assessment of statutory tests. Tests that use the language of 'reasonableness' or 'all of the circumstances' arguably require consideration of more than the facts of a specific event or instance of conduct. 'Reasonableness' has long been accepted as incapable of fixed expression and adaptable to the circumstances, as well as depending on your perspective.[3] In order to assess what is reasonable in the context of a particular industry, a regulator needs to have some sense of the standards, practices and norms of that industry.[4] Considering all of the circumstances of particular events or conduct requires consideration of the context in which those events occurred — you have to 'know the business' before you can assess its compliance.

The need to know your industry is even stronger in regulatory schemes involving decisions that involve expertise from different disciplines. For example, energy regulators are tasked with making decisions on pricing and tariffs, which involves expertise from economics, law and engineering, as well as matters of principle and methodology of approach.[5] Such decisions require a regulator to exercise judgment on 'numerous interrelated and complex matters, ranging from general principles to findings on specific facts'.[6] The exercise of such judgment requires an in-depth knowledge of the industry, as well as the ways in which different decisions may shape and influence both the industry as a whole and individual participants.

While not nearly as complex as pricing decisions, Acts are increasingly adopting matters that are more a matter of judgment than clear-cut fact. Drawing again from the AML/CTF Act as an example, the Act provides for a risk-based regulatory scheme, in which regulated entities are required to have programs that identify, mitigate and manage risks of money laundering to which the entity and its services may be exposed.[7] Such risk assessments are inherently fact- and circumstance-specific, requiring regulator knowledge of not just the entity but also the broader industry sector in which the entity operates.

Some regulators are also involved in the elaboration of the regulatory framework through regulation and rule-making powers. AUSTRAC has both power to make statutory rules and powers to modify the application of the Act and rules or exempt a particular entity from the

3 Chris Wheeler, 'What Is "Fair" and "Reasonable" Depends a Lot on Your Perspective' (2014) 22 *Australian Journal of Administrative Law* 63.

4 Simon Cohen, 'Fair and Reasonable An Industry Ombudsman's Guiding Principle' (2010) *AIAL Forum* <http://classic.austlii.edu.au/au/journals/AIAdminLawF/2010/18.pdf>.

5 John Tamblyn, 'Administrative Law Meets the Regulatory Agencies: Tournament of the Incompatible?' (2005) 46 *AIAL Forum* 39, 43.

6 Ibid 52.

7 AML/CTF Act ss 81, 84.

Act or rules.[8] The conferral by Parliament of powers to make statutory rules is an express form of 'the incomplete statute', whereby the legislation sets out 'basic policy parameters' and leaves most of the 'considerable detail' to the regulator.[9]

Setting regulatory standards rarely occurs in a vacuum and established industry practices will usually already exist. A regulator tasked with fleshing out the detail of a regulatory framework will need to understand existing practices in order to assess, in the first instance, whether they need to be addressed in the delegated legislation. Industry knowledge can assist in identifying whether there are problems, risks or harms associated with existing practices that need to be controlled or corralled in the regulatory framework. Equally, industry knowledge can identify practices that are suitable for adopting into a regulatory framework, providing clarity for new and existing participants while avoiding the problem of reinventing the wheel.

In addition to rule-making powers and the statutory tests and preconditions to the exercise of powers, Acts increasingly provide expressly for forms of industry engagement. It is common for the functions of regulatory bodies to include 'soft' regulatory tools, such as advice, assistance, education, information and anything else that promotes compliance with the regulatory scheme.[10] On one view, industry engagement may be seen as an obligation on the regulator to provide opportunities for industry to know their regulator. As a matter of practicality, such benefits are rarely unidirectional and both formal and informal industry engagement provide significant opportunities for the regulator to learn about industry practices, challenges, norms and cultures. As a Deputy Commissioner at the Independent Broad-based Anti-corruption Commission ('IBAC'), I regularly presented at the Victoria Police Academy. Each time I visited the academy, I gained a greater insight into policing culture, practices and priorities. This was useful in both scrutinising and questioning the conduct of members who I examined, as well as understanding elements of the policing environment which enabled, or protected against, acts of police misconduct.

Know your industry — because it supports efficient regulation

Effective and efficient regulation can be enhanced through trust between regulator and regulated.[11] Even where coercive powers exist, trust and candour provide a more efficient and effective use of those powers for both regulator and regulated. It is a truth, more often whispered than spoken aloud, that if everyone took every point in a regulatory scheme it would quickly grind to a halt and then collapse.[12] Regulated entities are more likely to be circumspect in their candour if they do not trust the regulator or regulatory scheme.

8 AML/CTF Act ss 229, 247, 248.

9 Mark Aronson, 'Judicial Review of Administrative Action: Between Grand Theory and Muddling Through Westlaw AU' (2021) 28 *Australian Journal of Administrative Law* 6, 14; Peter Nicholas, 'Administrative Law in the Energy Sector: Accountability, Complexity and Current Developments' (2008) 59 *AIAL Forum* 73.

10 See, eg, AML/CTF Act s 212(e); *Independent Broad-based Anti-corruption Commission Act* 2011 (Vic) s 15(5).

11 John Braithwaite and Toni Makkai, 'Trust and Compliance' (1994) 4 *Policing and Society* 1; Adrian Cherney, 'Trust as a Regulatory Strategy: A Theoretical Review' (1997) 9 *Current Issues in Criminal Justice* 71; Valerie Braithwaite, 'Closing the Gap between Regulation and the Community' in Peter Drahos (ed), *Regulatory Theory* (ANU Press, 2017) 25 <http://press-files.anu.edu.au/downloads/press/n2304/pdf/ch02.pdf>.

12 Described by Braithwaite as the motivational posture of 'disengagement', a defiant posture of dismissiveness to the regulator's authority: Braithwaite (n 11) 34.

Regulators taking the time to learn their industry can assist in building trust in both the regulator and the regulatory scheme itself. An industry that feels heard and respected is more likely to exhibit trust and candour. Regulators build credibility by learning from the 'knowledge and experience of those closest to the intricacies' of the regulated industry.[13] While a regulator is unlikely to ever know as much as a lifelong industry participant, that is a feature (not a bug) of the design. While knowing your industry can narrow the gap between industry and regulator knowledge, a gap must be preserved to ensure that the regulator can act in the public interest by both bringing its own mind and incorporating perspectives from outside of industry into its decision-making.

Mr Sal Perna AM, Victoria's inaugural Racing Integrity Commissioner, is an exemplar of a regulator who made an art form of 'know your industry, know your regulator'. After 11 years in the role, there is hardly an industry participant in thoroughbred, harness or greyhound racing with whom Perna has not met. He has an equal knowledge and appreciation of the practices of multi-million-dollar horse studs as he does of the practices of a trainer in Melbourne's outer suburbs who raced a few dogs on the weekend. Mr Perna is so synonymous with industry engagement that it may surprise some that, under the *Racing Act 1958* (Vic), the Racing Integrity Commissioner does not have an express industry information and engagement function. Regulators do not need statutory authority to know their industry — it is just good practice.

Finally, knowing your industry provides the regulator to properly scrutinise and assess a regulator's information, compliance and candour. Knowing how an industry normally operates is necessary to asking the right, probing questions to break through the gloss of a regulated entity's justifications or assurances of changed behaviour and compliance. Efficient and effective regulation relies on a mixture of both trust and institutional distrust. An effective regulator is not one that accepts without question the positions and claims made by regulated entities. Some challenge and testing are required — and, indeed, expected by the public.

Knowing your regulator

The benefits to industry of knowing their regulator(s) are largely to do with efficiency of compliance. Knowing what the regulatory requirements are, the regulator's position on any contestable issues and the regulator's approach to monitoring compliance provides regulated entities with greater certainty in the development and operation of their systems and procedures for compliance.[14] Uncertainty is expensive, so the greater the clarity and understanding, the lower the costs of compliance.

Where a regulated entity seeks to know their regulator, the success of such efforts will be greatly influenced by the transparency of the regulator. The types of things that regulated entities are likely to be interested in include a regulator's priorities, approach to regulation and, where relevant, approach to complaint handling. Such information can contribute to consistency in the approach to similar matters by both the regulated and the regulator.[15] In

13 Gail Pearson, 'Business Self-Regulation' (2012) 20 *Australian Journal of Administrative Law* 34, 36.
14 Braithwaite (n 11) 28–9.
15 Cohen (n 4) 23.

some regulatory schemes, knowledge of the decisions made by the regulator in individual cases will also be relevant, especially where such decisions lead to new or refined standards or expectations.[16] The Information Commissioners at both state and federal level are particularly good at this approach, regularly publishing decisions that provide guidance in the factually dependent contexts of freedom of information and information privacy.[17]

Regulated entities knowing their regulator also provides a form of accountability to regulators. Providing regulated entities (and the public more broadly) with a clear sense of what can be expected from a regulator enables an assessment of the regulator's performance against their own commitments and objectives, thereby facilitating informed public scrutiny.[18]

Learning about your industry and regulator

Regulators and regulated can build their knowledge of each other through formal and informal processes, such as meetings, industry consultation and education.

Industry education through forums and workshops is now a standard practice amongst regulators. Such education can be adapted to the resources of the regulator and circumstances of the industry. The Victorian Racing Integrity Commissioner has had a long-standing practice of roadshows, with the commissioner touring Victoria for weeks at a time presenting to industry participants at their local racing clubs.[19] In COVID times, regulators are increasingly using technology to deliver education. AUSTRAC has introduced a monthly induction program involving virtual workshops for new regulated entities.[20] In addition to raising entity awareness of their regulatory obligations, education provides regulators with an opportunity to meet and hear directly from industry participants.

Industry consultations also provide a regular and formal opportunity for industry engagement. Consultation is regularly used to test draft guidance and statutory rules against the realities of industry practice. Some regulators use industry advisory bodies to provide an ongoing opportunity for industry and regulator to exchange views about the operation of the regulatory framework.

Industry engagement does not need to be resource intensive or particularly formal. Some of the most effective engagements between regulated and regulator occur in meetings between representatives of the two bodies. Meetings are a significant regulatory and information-gathering tool because they are flexible and adaptable to the needs and circumstances of regulated and regulator. When there are compliance issues, they can provide close and continuing scrutiny of remediation efforts, as well as providing a regulator with the opportunity to literally eyeball the entity and test their commitment to do better in

16 Ibid 27.

17 See, eg, 'Decisions', *Office of the Victorian Information Commissioner* (Web Page) <https://ovic.vic.gov.au/decision/>; and 'Information Commissioner review decisions', Office of the Australian Information Commissioner (Web Page) <https://www.oaic.gov.au/freedom-of-information/information-commissioner-decisions/information-commissioner-review-decisions/>.

18 Graeme Orr and Joo-Cheong Tham, 'Work and Employment: Accountability and the Fair Work Ombudsman' (2011) 13 *Australian Journal of Administrative Law* 127, 131.

19 Racing Integrity Commissioner, *Annual Report* 2019–20 (2020) 8.

20 'Induction program for new reporting entities', *AUSTRAC* (Web Page, 2021) <https://www.austrac.gov.au/induction-program-new-reporting-entities>.

the future. As a tool, meetings are available to be deployed by either regulated or regulator and there are many regulated entities — at state and federal level — who are not shy about picking up the phone to introduce themselves to a new regulator.

Monitoring and supervision activities also provide opportunities for in-depth exchange of information between regulator and regulated, especially where they take place on the premises of the regulated entity. The ability to see an entity's operations and ask questions directly can provide a regulator with significant insights, as well as an opportunity for timely — even on-the-spot — feedback about the entity's compliance. The Australian Securities and Investments Commission ('ASIC') has taken the onsite inspection approach a step further by embedding regulatory staff with regulated entities through its Close and Continuing Monitoring program.[21] This program seeks to identify behaviours, environments and cultures that contribute to the risk of misconduct, regulatory breaches and unethical conduct, before such conduct and breaches occur.[22]

Finally, most regulators also have statutory powers to compel a regulated entity to produce information and documents. Such tools are used not only to obtain evidence of particular instances of noncompliance, but also to gather contextual information about the entity's governance, structure and operations.

Knowing your industry and administrative law

I have argued that a regulator needs to know their industry because it is required by their Act. I now turn to establishing this connection through the lens of normative principles of administrative law as reflected in individual grounds of judicial review.[23] While it will ultimately depend on the text, context and purpose of the specific legislation expressing the regulatory scheme,[24] some general observations can be made.

First, the use of context-specific standards such as 'reasonableness' and the use of principles or risk-based regulation implies that industry knowledge may be a mandatory relevant consideration. It would almost be a meaningless nonsense for a regulator to make a decision about the reasonableness of certain conduct, or assess the management of risks, without any knowledge of the relevant industry or business. The prospect that a regulator could make decisions that are ignorant of industry circumstances becomes more remote as Acts continue to provide for industry participation and consultation.

Second, industry knowledge may be seen as either a requirement of or, at the very least, consistent with the obligation to afford procedural fairness. Procedural fairness requires a decision-maker to provide a person affected by a decision with an opportunity to comment

21 Vicky Comino, 'Culture Is Key — An Analysis of Culture-Focused Techniques and Tools in the Regulation of Corporations and Financial Institutions' (2021) 49 *Australian Business Law Review* 6, 13.
22 Ibid 14.
23 Aronson (n 9) 18.
24 *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384, 408; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 384.

on adverse information that is credible, relevant and significant.[25] The obligation to give procedural fairness has also been described by the shorthand of a person being notified of the case against them.[26]

Each of these formulations involves concepts of the affected person and the decision-maker having a shared understanding of the facts relevant and significant to the decision-maker's decision. Procedural fairness can therefore be seen as narrowing the gap in knowledge and understanding between decision-maker and affected person, thus '[promoting] a sense of congruence between the decision-maker and the affected person in the decision-making process'.[27] A regulator that knows their industry and can understand relevant information in context may have a smaller gap between their own understanding and that of the regulated entity. From an instrumentalist perspective, this may influence the nature of responses from regulated entities to any invitation to comment on adverse information, with greater willingness to accept breaches and a focus on what is required for remediation and deterrence.

While the individual grounds of judicial review provide a clear reason for a regulator to know their industry, they are limited to the points at which a regulator makes a decision about a particular regulated entity. Such an approach may be sufficient when considering activities that are transactional, such as deciding applications for payments or licences. It is less so for regulation, which is not a series of transactions but a continuous and ongoing activity. Outside of statutory rule-making powers, most decisions by regulators affect only a small proportion of regulated entities and represent a fraction of the work of any regulator. While they do not attract the same headlines as the exercise of coercive and enforcement powers, the most significant work of a regulator — education and engagement — is done long before a particular administrative decision needs to be made.

To understand industry engagement activities within the frame of administrative law, it is necessary to move beyond discrete grounds of review to conceptual and theoretical perspectives.

I advocate that regulation is a relational activity and that knowing your industry and knowing your regulator provides the respect, trust and shared understanding necessary for a productive relationship. Compared to the more transactional nature of the work of law enforcement agencies, regulators and regulated are in it for the life of the business.

By construing regulation as a relational activity, I position regulation within the dignitarian approach to administrative law, in which administrative authority is construed as a relationship between those who possess government power and those who are subject to it.[28] If a regulator seeks to influence and change behaviour within an industry then it should, as a matter of respect, know something about the dynamics, norms and circumstances of that industry.

25 *Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 225 CLR 88.

26 Daniel Stewart, 'Taking the Brakes Off: Applying Procedural Fairness to Administrative Investigations' (1997) 13 *AIAL Forum* 3, 4.

27 *R (Osborn) v Parole Board* [2014] AC 1115, 1150 [71].

28 Kristen Rundle, 'The Stakes of Procedural Fairness: Reflections on the Australian Position' (2016) 23 *Australian Journal of Administrative Law* 164, 165.

Dignity is not just an end in itself but has an instrumentalist function. Arie Freiberg has observed that 'regulatees [who] are treated in a procedurally fair manner are more likely to comply'.[29] Groves has identified the 'fairness effect', drawing on studies that a person's perception of the fairness of their treatment can influence their willingness to change their behaviour.[30]

Finally, enabling a regulated entity to know their regulator is consistent with the administrative law value of transparency.[31] As already discussed, Parliament often leaves much of the detail of regulation to the discretion and expertise of the regulator. Entities may not be able to ascertain a regulator's approach to regulation from the legislation alone. Proactively publishing information about regulatory priorities and approach ensures that regulated entities not only know the case against them but also how that case may be prioritised, pursued and resolved. Again, this can only be conducive to an efficient and effective response to regulation.

Pitfalls and challenges

Having canvassed the benefits and reasons why a regulator should know their industry, and vice versa, it is necessary to make a few observations about the pitfalls and challenges of industry knowledge.

The obvious challenge is that of 'regulatory capture'. This phrase conveys a wide range of criticisms about the nature of a regulator's relationship with the regulated. It can be a conclusionary term reflecting a loss of confidence in the regulator's ability or performance. The more extreme versions of regulatory capture involve a power imbalance in favour of the regulated to such a degree that the regulator is considered to be unable to exercise effectively its statutory powers to control or limit the harms to which the regulatory scheme is directed.[32] Another version of the criticism is that the regulator has shifted from being a 'watchdog' or 'corporate cop' to being a champion or proponent for the industry which it is supposed to regulate. Milder versions of the criticism were seen in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Hayne Royal Commission), where ASIC was criticised for preferring enforcement actions that were negotiated with regulated entities, rather than litigated before courts, where public censure of entities' conduct could be expressed.[33]

29 Arie Freiberg, *Regulation in Australia* (The Federation Press, 2017) 1, 492.
30 Matthew Groves 'The Unfolding Purpose of Fairness' (2017) 45 *Federal Law Review* 653, 675–9.
31 Andrew Edgar, 'Administrative Regulation-Making: Contrasting Parliamentary and Deliberative Legitimacy' (2016) 40 *Melbourne University Law Review* 738, 740.
32 Daniel Carpenter, 'Detecting and Measuring Capture' in Daniel Carpenter and David A Moss (eds), *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (CUP, 2013).
33 Kenneth Hayne, *Final Report: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (2019) 424.

At the heart of the criticism is the concern that a regulator is no longer exercising public power to protect the public or promote the public interest but is instead exercising — or refraining from exercising — public power in ways that benefit the regulated entities. Such a regulator is considered to have lost the independence that is 'fundamental to the effectiveness and legitimacy' of regulators.[34]

To be seen as credible, regulators must both be and be perceived to be impartial on an institutional and operational level.[35] As such, the risk of regulatory capture is one that all regulators must be aware of and actively monitor. Regulators need to be active in challenging themselves and their staff to ensure that they are not seeing the world and the regulatory scheme solely from the perspective of regulated entities. While regulation is not an adversarial exercise, it may sometimes be necessary for a regulator to identify, evaluate and take into account the case that is counter to that put by the regulated entity.[36]

Structures within an organisation can also assist in protecting against being 'susceptible to capture'.[37] For example, regulators may wish to separate decision-makers from those who have regular engagement with industry, as well as separate those who investigate and analyse from those who make decisions.[38] Regular rotation of staff within an agency can also assist in protecting against intimacy with particular industry sectors and participants. Robust and enforced policies and guidance on conflicts of interest, gifts and hospitality also support both perceived and actual regulatory independence.

Regulatory independence is necessary to distinguish state-based regulation from self-regulation. A regulator that sees only the industry perspective provides no greater utility than that which can be achieved through self-regulation.

Expressing the problem as one of perspective also suggests a solution. Regulators need to incorporate a broad range of views about and of the industry. This can include engaging with a broad range of regulated entities and not just the largest, noisiest or most risky. It means engaging with industry participants who may not be regulated entities, such as clients and consumers, advisors and experts, ancillary services, and (depending on the industry and regulatory scheme) unions.[39]

Regulators also need to find ways of engaging with views and perspectives of an industry that sit outside of the industry and yet still provide meaningful information. Such information can come from organisations and people who sit at the edges of a regulated industry but are independent of that industry. Such sources may not be independent in the strict sense, as

34 Stephen Free, 'Across the Public/Private Divide: Accountability and Administrative Justice in the Telecommunications Industry' (1999) 21 *AIAL Forum* 26, 20.
35 Ibid 20–1.
36 Tamblyn (n 5) 43.
37 Hayne (n 33) 424.
38 Tamblyn (n 5) 44.
39 Orr and Tham (n 18) 131.

they are likely to reflect the interests of their clients or their own business. It is not necessary to find independent perspectives (assuming it is even possible for them to exist) or even the 'right' or 'authoritative' perspective. Rather, it is about the mix. The greater the number of different perspectives a regulator can access, the richer and more comprehensive will be the regulator's understanding of the industry.

Academics may be another source of different views and can be particularly helpful in understanding the operation of systems and individual behaviours within those systems. In my experience, academics are an underutilised source of information and perspective for regulators. The reasons for this are not entirely clear. The public is another important source of information, although it can be a challenging source to access in an effective and efficient way. Advisory groups and stakeholder groups can be a more manageable way of understanding public experience of an industry than engaging with the public at large.

Getting a perspective outside of that of the regulated entity is particularly challenging when the regulator is responsible for a single regulated entity, such as occurs in police oversight jurisdictions. When overseeing police, the standard of acceptable conduct is usually that set by the police themselves. Police training, operations, powers and equipment create a highly specialised operational environment which is difficult to understand without first understanding a great deal about the particular police force and environment. Having done so, how does an 'independent' police oversight body bring views and perspectives that are independent of, but informed about, policing?

One way is to engage with other regulators that regulate the same entity. Different regulators will have different lenses through which to understand and scrutinise the regulated entity's conduct and the standards against which they operate. When I was Deputy Commissioner of IBAC, I found the role of the Victorian Equal Opportunity and Human Rights Commission ('VEOHRC') to be a particularly useful and critical one. The commission's work on sexual harassment and sex discrimination in Victoria Police[40] remains an exemplar of how a regulator can influence behavioural change at an organisational level. While we had different jurisdictions and focuses, my engagement with VEOHRC often produced useful understandings and insights into Victoria Police, as well as very practical information such as the most appropriate people to invite to a meeting — a not insignificant contribution when faced with a hierarchical organisation of over 20,000 people.

Conclusion

Regulators need to know their industry because it is required by the Acts that establish and confer powers on a regulator and it promotes efficient and effective regulation. By an industry knowing their regulator, efficient compliance and business practices are supported. Depending on the text, context and purpose of an Act, industry knowledge may rise to the

40 Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Sex Discrimination and Sexual Harassment*, *Including Predatory Behaviour in Victoria Police: Final Review and Audit (Phase 3)* (2019).

level of a mandatory relevant consideration and is relevant to a regulator's obligation to afford procedural fairness. Knowing your industry and knowing your regulator reflects a dignitarian concept of administrative authority and has instrumentalist functions in promoting compliance.

Regulators can facilitate this shared learning through publication of information about their priorities and approaches to regulation and through workshops, forums, consultation, advisory groups, onsite inspections and meetings with regulated entities. Industry knowledge is necessary, but not sufficient, for an independent regulator. Regulators who seek to avoid the pitfall of regulatory capture need to keep their understanding of industry broad and reflective of more than the industry's own view of itself.