

The emergency manager as a regulator

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A number of industries in Australia have come under close scrutiny in recent years and the revelations have been less than flattering. The government agencies that regulate those industries have been just as keenly scrutinised and their performance has been shown to be wanting.

Emergency services organisations (ESOs) have also had their share of scrutiny. Their performance in preparing for and managing the response to emergencies has attracted criticism. But what of the role of ESOs as a regulator? These agencies, particularly fire services and land management agencies, often have obligations under their own legislation to regulate industry in those areas where a hazard is present by the very nature of the work. They are also called on to support other regulators through the provision of specialist advice.

ESO personnel exercise their roles in preparedness and response through relationships based on trust. ESO personnel are usually experts and have earned the respect of others in their field.

As a regulator, they often require industry members to act on observations of weakness or oversight. These actions can incur significant expense and the potential for tension and conflict in these relationships is ever-present.

To be effective, the emergency service regulator must have a deeper understanding of the industry they are regulating; not just an awareness of the hazards and associated risk. The regulator must understand the context in which the industry manages those hazards and risks. If an ESO officer is to have any influence they must be credible. Regulatory decisions taken or directions given that have no regard for context will be resisted and open to challenge. The regulator's effectiveness comes from an understanding of the law and how to apply it consistently and proportionally.

To illustrate, fire services have regulations for the use of fire in the open, especially where it can potentially escape and threaten others. Most jurisdictions have systems of permits that allow for the use of fire as well as equipment that could be a possible ignition source at times of elevated fire danger. Fire service officers understand the risk of ignition and the nature of fire propagation. Their knowledge of risk and risk management is extensive.

Fire service officers as regulators must understand the nature of the industries that use fire or equipment that could cause a fire. If a permit is granted for these purposes, it must reflect a solid understanding of how the risk is generated, mitigated and managed. The conditions imposed through permits should complement this.

There is ample guidance for regulators at both national and international levels. The Australian, state and territory governments have published documents that reflect the principles of collaboration, consistency, efficiency, intelligence-led, outcomes-focused, proportionate, risk-based and transparency. These are well understood and one would hope they are applied.

When ESO officers are required, as part of their role, to regulate risks within the communities they serve, there must be a deep understanding of context. The regulator must demonstrate a credible understanding. They must be able to recognise the occasions where the people are obfuscating or misleading them – a rare but not unheard-of situation. They must be able to act with credibility and apply the law in context.

The relationships they have with those they are regulating is different to that of the emergency service responder. They must be able to act in both environments.

A key principle of good regulatory practice suggests that the regulator should be 'driven by outcomes'. Emergency service personnel understand the importance of the concepts of flexibility and adaptability. These can be applied effectively in the regulatory task as well. If you understand context and if you understand the nature of the relationship between the regulator and those subject to regulation, then achieving the community's expected outcomes from the regulatory process is far more likely.