

ARA SUBMISSION

SUPPORTING ECONOMIC RESILIENCE THROUGH REGULATORY RESPONSIVENESS – LESSONS FROM COVID-19 AND OTHER SHOCKS

23 MAY 2022

The Australian Retailers Association (ARA) welcomes the opportunity to make this submission to the Department of Prime Minister and Cabinet (PMC) about the responsiveness of regulators in helping retail businesses manage the COVID-19 pandemic and other shocks.

INTRODUCTION

The ARA is the oldest, largest and most diverse national retail body, representing a \$360 billion sector that employs 1.3 million Australians and is the largest private sector employer in the country. As Australia's peak retail body, representing more than 100,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

Retailers have been heavily impacted by Australia's pandemic response and natural disasters over the past two years, managing supply chain impacts, labour and workforce disruptions, border closures, lockdowns and other health restrictions as they responded to rapidly changing consumer demand and volatile retail trade.

At times, the ability of retailers to respond to these changes was frustrated by the limitations of regulatory frameworks across the country and inconsistencies between how different regulators responded to external factors. However, there are instances where the responsiveness of regulators and flexibility within regulatory frameworks supported our sector in managing the pandemic and natural disasters.

This submission draws on insights and perspectives from engagement with the ARA's membership over the course of the past two years.

GUIDING PRINCIPLES FOR REGULATORY RESPONSIVENESS

The ARA agrees with the views of the Organisation for Economic Cooperation and Development (OECD) noted in the consultation paper, that best practice regulatory systems can support economic resilience in three ways.

1. Regulatory systems can prevent the build-up of vulnerabilities to reduce exposure to shocks.
2. Regulatory systems can help absorb the negative impacts of shocks when they do occur.
3. Regulatory systems can assist businesses and the community to 'bounce back' from shocks, through adaptation and transformation.

We suggest the following principles should guide how regulators apply these objectives during a time of crisis or disruption.

1. Conduct regular risk assessment and prioritisation, informed by robust data to improve preparedness and planning for shocks.
2. Build flexibility and agility into regulatory frameworks, so that appropriate discretionary powers can be exercised without the need for legislative changes or undue procedural delays.
3. Ensure that these discretionary powers are balanced by an appropriate review to be conducted within a reasonable timeframe once the crisis passes.

RESPONSES TO QUESTIONS

We have responded to relevant questions from the consultation paper in the table below.

1. How Australian Government Regulators responded during the challenges of the COVID 19 pandemic and any lessons learned.	
1.1 What helped regulators to respond effectively to the COVID-19 pandemic or other shocks?	<p>The ability of regulators to respond quickly to shocks was critical in response to the impact of COVID-19 on the retail sector. For example, the ability of the Australian Competition and Consumer Commission (ACCC) to approve 33 authorisations to allow competitor collaborations within a six-week period¹ is commendable and ensured retailers were able to ensure supply of food and other essentials, including medicines.</p> <p>The ACCC also acted quickly in granting authorisations to help industry address supply chain challenges over the past six months in response to the shortage of AdBlue and flooding in central Australia, Queensland and New South Wales.</p>
1.2 What are some examples of effective regulatory responses that helped businesses deal with the disruptions caused by COVID-19? Can these lessons be applied in other areas of regulation?	<p>JobKeeper was instrumental in enabling many small businesses to retain employees and stay in business during the pandemic. The ability of the Australian Tax Office (ATO) to scale up and implement the JobKeeper program is also commendable.</p> <p>The release, by National Cabinet, of the mandatory Leasing Code of Conduct for commercial tenancies was also an important and effective regulatory response for retailers during the height of the pandemic as it enabled the sharing of financial risk and lessened the impact of cashflow issues during the COVID-19 crisis.</p> <p>Similarly, flexibility around workplace health and safety compliance was critical in allowing employees to work from home, to ensure businesses stayed open while operating safely, even if not in strict accordance with normal rules and guidelines. It is particularly helpful that regulators flag when and how they will exercise discretion to refrain from enforcement activities, as well as when strict compliance is expected to resume so that businesses can adjust accordingly.</p>
1.3 What are some examples of ineffective regulatory responses to COVID-19 and what can regulators learn from these going forward?	<p>Responses were not necessarily ineffective but in many cases were implemented inconsistently in different settings as well as in different jurisdictions. Some states had varying rules for retailers, depending on the type of business, for example hair and beauty, as opposed to food service. And while there was mostly a sound rationale for these differences, in many cases the different rules persisted longer than necessary and added to confusion for both retailers and consumers.</p> <p>Likewise, the differing COVID restrictions across state and territory jurisdictions added an unnecessary layer of regulation, making compliance unduly more complex for retailers.</p>
1.4 Were there particular aspects of your resilience and recovery management that were constrained (or facilitated) by the regulatory environment?	<p>The two most significant impacts on business as usual during the pandemic were border closures and public health settings enforced by government agencies. The impact of border closures and close contact rules that disrupted the retail supply chain and created staff shortages in stores was exacerbated by inconsistencies between jurisdictions, short notice periods for implementation and poorly worded regulation.</p> <p>In contrast, the National Coordination Mechanism, managed by Emergency Management Australia, facilitated the efficient and effective sharing of information between government, industry groups and businesses to successfully define, size and address critical supply chain issues.</p>

¹ ACCC [COVID-19 related authorisations report](#)

<p>1.5 Were there any temporary measures that should be adopted on an ongoing basis, to reduce the regulatory burden on business, while supporting optimal regulatory outcomes?</p>	<p>The easing of restrictions on working hours for international student visa holders should be adopted on an ongoing basis. Similarly, the removal of the cap that allowed working holding visa holders to work with one employer for longer should also be retained on an ongoing basis.</p> <p>International students and working holiday makers are an important source of labour for the retail industry, which faces an ongoing labour shortage, even as the economy recovers.</p> <p>As the labour market continues to tighten, these policy settings will enable employers to minimise the costs of recruiting new employees and reduce costs associated with staff churn, supporting the retail recovery and taking pressure off costs and inflation.</p>
<p>1.6 What should regulators consider to balance the benefits and costs when responding flexibly to a shock?</p>	<p>Regulators need to weigh up the risks of acting quickly against risks of not responding against responding in a way that exacerbates the impact of the initial shock.</p> <p>Through the pandemic, we have seen how good regulation communicated in a considered manner creates business confidence and minimises compliance costs. In contrast, we have seen the detrimental financial and emotional impact on our sector arising from poor regulation communicated with little or no notice period, sometimes with immediate effect.</p>
<p>1.7 How can we measure the success of regulatory interventions that seek to reduce the impacts of shock.</p>	<p>Any measurement, similar to a cost benefit analysis, would consist of comparing the actual outcome of a regulatory intervention against the likely outcome had there been no intervention. For example, the number of small businesses still operating after a regulatory intervention, growth in sales, turnover or employee numbers could all be useful indicators of the success or otherwise of the intervention.</p>
<p>1.8 Where are the opportunities to digitise regulatory processes to increase business productivity and efficiency?</p>	<p>Australia was fortunate that many regulatory processes were digitised prior to the pandemic and where they were not, plans to digitise were able to be accelerated.</p> <p>As an example, E-invoicing proved critical to increasing small business productivity and efficiency. While implementation of e-invoicing is underway, it remains critical that regulators and government agencies are at the forefront of the adoption of this innovation.</p>

2. PM&C would like to know more about your experience of how Commonwealth and state regulatory systems worked together to implement regulatory response in the wake of the COVID-19 pandemic.

<p>2.1 What are some examples that you observed of effective collaboration between the Commonwealth and state and territories in the regulatory response to COVID-19?</p>	<p>There was clear intent for national collaboration at the outset of the pandemic, as demonstrated by the establishment of the National Cabinet, development of the Leasing Code of Conduct, and implementation of national schemes like JobSaver and JobKeeper.</p> <p>However, In the ARA's assessment, this collaboration failed to be effective beyond the first six months of the pandemic. For example, the Leasing Code of Conduct was not implemented consistently across States and Territories.</p> <p>Too often, the ARA observed a failure to collaborate and ensure a consistent regulatory response across state borders, which proved costly to retailers with national operations.</p> <p>For example, regulators did not have a consistent definition of Small-Medium Businesses (SMBs), which meant that revenue thresholds that applied to various means of assistance varied. Franchises and franchisees were also treated inconsistently.</p> <p>And States and Territories all had varying definitions of essential goods and services. The ARA submits that this is one area that could have benefited from a federal protocol via National Cabinet.</p> <p>The lack of national consistency around COVID-19 safety protocols was extremely disruptive to retailers who often operate national businesses. This inconsistency, particularly when it impacts on health and safety, is counter-productive, confusing and inefficient.</p>
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<p>2.2 Are there opportunities for improvement in joint Commonwealth-state regulatory responses? If so, what are they? What specific changes are needed to Commonwealth-state regulatory systems are needed to ensure that they are more responsive into the future?</p>	<p>Yes, the ARA believes there are opportunities for improvement in joint Commonwealth-state regulatory responses. We recommend that national harmonisation of regulatory responses should be a priority. Unless there is a specific need for a state/territory response to differ from the other jurisdictions, the underlying guiding principle should be that regulatory responses are consistent across the country.</p> <p>Australia is large country with a small population, and so the costs of regulating and running markets would be best served by a consistent, nationally harmonised regulatory framework. Of course, this should always be balanced against the need for local communities to be empowered to act and respond to local emergencies and issues, noting that in the recent floods in NSW and Queensland the ability of local communities, including businesses to make decisions and respond quickly was critical.</p>
<p>2.3 Were there any temporary changes to regulatory responses that should be considered for adoption on an ongoing basis?</p>	<p>Yes, the easing of restrictions around international student visa holders and working holiday makers that helped to address labour constraints.</p> <p>We submit that these changes should become a permanent arrangement given that the retail industry faces an ongoing labour shortage as Australia's economy recovers, noting that both cohorts are a critical source of labour for the retail industry.</p>
<p>3. PM&C is seeking information on whether there are any existing laws and regulations that you believe impeded or supported the COVID-19 response.</p>	
<p>3.1 Have existing laws and regulations allowed agencies to respond effectively to shocks relating to the COVID-19 pandemic?</p>	<p>The ARA suggests that the existing laws and regulations were, in most cases, fit for purpose. However, it was Australia's federated system that led to most frustrations and complications, due to inconsistency around the application of various laws and regulations between different jurisdictions.</p> <p>The pandemic exposed shortcomings in the federal government's ability create national consistency but it also demonstrated the positive role that government can play in navigating shocks.</p>
<p>3.2 Did governments and regulators have effective powers, including emergency and discretionary provisions, to deal with the effects of COVID-19? Is there a case for further legislative changes?</p>	<p>The emergency and discretionary powers available to Government and regulators are extensive.</p> <p>We suggest, that given the extensiveness of these powers, a post-crisis review should always be undertaken to determine how effectively such powers were used and whether there were any unintended consequences of their use. Dependant on the outcome of the review process, legislation should then be amended to better prepare for the next emergency.</p>

CONCLUSION

Thank you again for the opportunity to provide comments in response to PMC's consultation on regulatory responsiveness. We look forward to continued engagement with the Department in relation to deregulation and regulatory best practice.

Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.

Yours sincerely,



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