

# TESTING RESPONSIVE REGULATION IN REGULATORY ENFORCEMENT

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## ABSTRACT

The policy ideals of responsive regulation have been developed on the basis of substantial empirical evidence. The overall formulation of responsive regulation theory itself, however, has rarely been empirically tested. This paper sets out the theoretical concept of responsive regulation in the context of business regulation enforcement and discusses how we might operationalize and empirically measure it. We develop two alternative theoretical interpretations of responsive regulatory enforcement – ‘tit for tat’ responsive regulation and ‘restorative justice’ responsive regulation. We then measure business firms’ perceptions of the reactions and counter reactions of a regulatory enforcement agency throughout the investigation and enforcement process. We find little evidence of tit for tat responsiveness actually occurring in practice. To the extent that tit for tat responsiveness does exist, we find a small amount of evidence that it has the hypothesised effects on behavior, but not on attitudes. We find clearer evidence of restorative justice responsiveness having the hypothesised effects on attitudes, but not behavior.

## INTRODUCTION

‘Responsive regulation’ is a leading approach to describing *and* prescribing how regulatory enforcement action best promotes compliance (Ayres & Braithwaite 1992; Braithwaite 2002). It proposes that in order to be effective, efficient and legitimate, regulatory policy should take neither a solely deterrent nor solely cooperative approach. Rather responsive regulation proposes a principled way in which to combine the insights from plural theories of compliance and enforcement: – including those that propose that people comply only where they calculate it is in their self-interests to do so (Shover & Hochstetler 2006, Simpson 2002, Grasmick & Bursik 1990), and those that see people as complying for normative or social reasons (Tyler 2006).

Ayres and Braithwaite’s book *Responsive Regulation* (1992) is probably the most influential version of responsive regulation. It has been explicitly adopted by a wide range of regulators (see eg V. Braithwaite 2007, Braithwaite 2002, p. 31, Gunningham 2007, p. 129, Leviner 2008, Mascini & Van Wijk 2009). It is also regularly applied, developed and tweaked by other scholars (eg Baldwin & Black 2008, Black 2001, Braithwaite et al 2007, Gunningham & Grabosky 1998, Gunningham & Johnstone 1999, pp. 114-133, Gunningham 2007, pp. 124-129, Haines 1997, pp. 218-229, Parker 2002, Simpson 2002). Many regulatory scholars have developed similar ideas to Ayres and Braithwaites’ responsive regulation, such as ‘flexible enforcement’ (Kagan 1994, p. 387; Rees 1994), ‘tit for tat’ regulatory enforcement (Scholz 1984a, 1984b, 1991; see also Burby & Paterson 1993, Harrison 1995), and ‘creative’ enforcement strategy (May & Burby 1998). Ayres and Braithwaite’s version of responsive regulation is, however, the most sustained and

influential account of how and why to combine deterrent and cooperative regulatory enforcement strategies.

Researchers have rarely sought to set out general, empirically testable, rules about being a ‘responsive’ regulator. One reviewer has suggested that responsive regulation advocates a contextual mix of enforcement strategies that may be inherently untestable (Rogers 1993, p. 338). This paper is a preliminary step in restating a nuanced policy-oriented theory in terms of a coherent and precise set of individual predictions (see also Nielsen 2006).

In the *first* part of the paper, we suggest that Ayres and Braithwaite’s responsive regulation can be interpreted in two alternative ways: ‘tit for tat (TFT) responsive regulation’ and ‘restorative justice (RJ) responsive regulation’. Whichever way we interpret and operationalize responsive regulation, it suggests the same hypothesis: A person that experiences responsive regulation will as a result have a more positive assessment of their experience of the investigation and enforcement process, more positive attitudes towards the regulator and compliance, and, crucially, better compliance behavior, than a person that does not experience responsive regulation. The two interpretations of responsive regulation, however, lead to two quite different definitions of what counts as responsive regulatory enforcement behaviour, and therefore two alternative and inconsistent sets of methodological recommendations about how to identify responsive regulatory enforcement in practice and test its impact.

The *second* part of the paper suggests a methodological strategy for operationalizing and testing each of the two alternative theories of responsive regulation. We apply these two strategies to self-report survey data from 141 Australian businesses that

experienced official investigation of alleged breaches of the federal competition and consumer protection legislation.

In the *third part* we test the hypothesized relationship between responsive regulation and business attitudes and behaviour in relation to both theories of responsive regulation and discuss our findings. We could find no examples of complete chains of tit for tat responsive interactions throughout the hole investigation and enforcement process in our data. Instead we tested for the effect of tit for tat responsiveness between single stages within the investigation and enforcement process. Using this approach we find a small amount of evidence of tit for tat responsiveness having the hypothesised effects on behavior, but not on attitudes. We find clearer evidence of restorative justice responsiveness having the hypothesised effects on attitudes but not behavior.

The *fourth* part of the paper concludes by discussing these findings and the problems with operationalizing responsive regulation for the purposes of either scholarly research or practical regulatory enforcement strategy.

## 1. RESPONSIVE REGULATION: TWO INTERPRETATIONS

### *Responsive Regulation*

Broadly speaking, theories that seek to explain regulatory compliance can be divided into three categories (Winter & May 2001): those that see people as motivated by economic *calculative motivations*, the fear of detection of violations and application of sanctions (Simpson 2002, pp. 22-44; Scholz 1997); *social motivations*, the desire to earn the respect and approval of significant others (Gunningham et al 2003; Rees 1997); and *normative motivations*, the sense of moral duty to comply and agreement

with the legitimacy of particular regulation (which can include evaluations of both the substantive and procedural justice of regulation) (Tyler & Darley 2000; Tyler 2006).

The main contribution of responsive regulation theory to our understanding of regulatory enforcement and its impact on compliance is its recognition that different people have different motivations for complying, and not complying, with the law, and that the same person or firm can have multiple, potentially conflicting, motivations for compliance, which Braithwaite calls ‘multiple selves’ (Ayres & Braithwaite 1992, pp. 30-35; Braithwaite 2002, p. 41). The existence of plural motivations for compliance and non-compliance in the same individuals and firms is well supported in other empirical research on compliance (Grasmick & Bursik 1990, Sutinen & Kuperan 1999, Winter & May 2001).

Responsive regulation seeks to advance explanations of regulatory compliance and the practice of regulatory enforcement by proposing a theory about the way these plural motivations for compliance interact with one another, and respond to plural deterrent and cooperative regulatory enforcement strategies. Responsive regulation thus synthesises other contradictory, but well supported, theories that seek to explain the impact of regulatory enforcement strategies on regulatory compliance. It does this by proposing that enforcement strategies should be arranged in a hierarchy or ‘regulatory pyramid’ with more cooperative strategies deployed at the base of the pyramid and progressively more punitive approaches utilised only if, and when, cooperative strategies fail. To make sure that they start as many ‘positive spirals’ of reactions and counter-reactions as possible, therefore, regulators should generally start enforcement from a presumption of being cooperative. Regulatees showing the will and ability to repair any harms they have caused and to reform themselves to come into compliance should be rewarded with less harsh enforcement (Ayres &

Braithwaite 1992, p. 19; Braithwaite 2002, p. 31). If regulatees fail to cooperate in response to offers of cooperation, the regulator should go on to ‘somewhat punitive’ action ‘only reluctantly and only when dialogue fails, and then escalate to even more punitive approaches only when the more modest forms of punishment fail’ (Braithwaite 2002, p. 30). When they become willing to cooperate, the regulator should, according to Ayres and Braithwaite, be able to forgive a history of wrongdoing (Ayres & Braithwaite 1992, p. 33) and de-escalate down the pyramid to less harsh enforcement.

Responsive regulation theory claims that this pyramid of enforcement activates different (potentially contradictory) motivations so that they interact to support compliance, and discourage resistance, game-playing and abuse in two main ways:

First, the application of the pyramid of enforcement strategies makes it beneficial for rationally calculating regulatees to be virtuous (Braithwaite 2002, p. 33). It is more rational for those who are motivated by calculations as to what is to their own benefit to ‘voluntarily’ comply than it is to resist and not comply where the regulator will otherwise escalate up the enforcement pyramid. The claim here is that the fact that people and firms have multiple selves means that once they agree to negotiate with a regulator (albeit for self-interested reasons), their better self can be brought to the fore through social and normative appeals.

Second, the pyramid makes the use of deterrence (which appeals to rational actor motivations) further up the pyramid normatively justified so that it does not break down people’s moral commitment to comply with the law: ‘[B]y resorting to more dominating, less respectful forms of social control only when more dialogic forms have been tried first, coercive control comes to be seen as more legitimate’ (Braithwaite 2002, p. 33).

Responsive regulation therefore proposes that regulatory enforcement agencies should take neither a solely deterrent nor solely cooperative approach. Rather a policy of responsive regulation is a “socially intelligent” way for the regulator to react to the behaviour of the regulatee.

#### *Hypothesised Impact of Responsive Regulation on Regulatees*

Responsive regulation theory hypothesises that each individual case of a regulatory enforcement agency investigating and potentially taking enforcement action against an individual or business will have an impact – for good or bad – on that individual or business’ future cooperation with regulators, commitment to compliance and compliance behaviors. Regulatory enforcement that is not responsive will often backfire and cause lack of cooperation and law breaking in the future (Braithwaite 2002, pp. 29-30; see also V. Braithwaite 2003). Responsive regulation is mainly a theory about how appropriate relations between regulator and regulatees during investigation and enforcement should lead to a more cooperative attitude in the future where the regulatee will work to achieve compliance with the goals of the law (not just strict rule compliance).

Therefore we hypothesise that regulatory enforcement that is responsive should lead regulatees to a more cooperative and compliant attitude in the future. It should also lead to behaviors in which they seek to promote their own compliance into the future. In particular, where the regulator has acted responsively through the investigation and enforcement process:

*H1: We expect the businesses to assess the outcomes of the investigation and enforcement process to be better than where the regulator has not acted responsively.*

They should see the behavior of the regulator throughout the process as fairer and less stigmatising. They should also learn things that are generally considered positive for increasing legal compliance, such as how to comply better and that it is good to cooperate with the regulators. They should not have learned things that are negative for legal compliance, such as how to get away with breaches or to fight with the regulator.

*H2:* We expect the businesses' *overall opinion of the regulator* to also be more positive (not just their assessment of the particular process they have experienced) than where the regulator has not acted responsively. Thus the business should see the regulator as more procedurally and substantively just and more flexible.

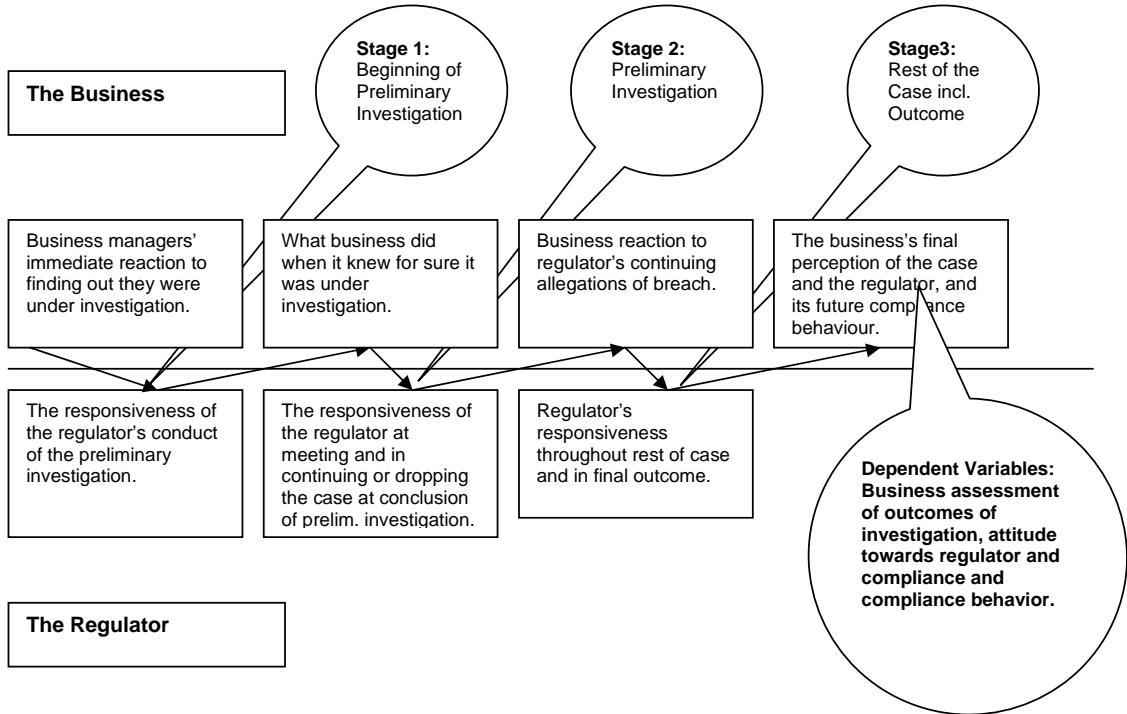
*H3:* We expect the business to do more to ensure it *complies with the relevant law*. We expect that respondents that have experienced responsive regulation would have a higher level of everyday compliance management behavior since the theory proposes that responsive regulation is a good way to build up the compliance commitment and capability of regulatees.

In order to test these hypotheses, we need to specify, operationalize and measure responsive regulation. This is inherently difficult since responsive regulation itself proposes that regulatory enforcement agents should make highly contextual judgments about how to behave in particular circumstances. In the sections that follow, we set out two alternative, equally plausible theoretical interpretations of responsive regulation that seek to specify in a measurable way how a responsive regulatory enforcement agent should behave. Drawing on language used by Braithwaite and other scholars, we label these two interpretations “tit for tat” responsive regulation and “restorative justice” responsive regulation. We go on to use our data to test these two interpretations in the later parts of the paper.

### *Tit for Tat (TFT) Responsive Regulation*

The simplest interpretation of responsive regulation is that enforcement staff should start at the bottom of the enforcement pyramid and then respond ‘tit for tat’ (TFT) to the regulatee’s response to the regulator throughout the enforcement interaction. With this interpretation of responsive regulation, we should expect to see a chain of individual instances of interaction in which the regulator begins the investigation with an attitude of trust and expectation that the business will seek to remedy any non-compliance, or, have an adequate explanation or excuse for the allegation made against it. From then on the enforcement agent’s approach at each stage of the investigation and enforcement process as it unfolds should always match the regulatee’s response in the previous stage. If the regulator’s and regulatee’s responses always match each other at each stage, then we can say that responsive regulation has occurred and we would expect this to correlate with the benefits hypothesised to proceed from responsive regulation. Figure 1 illustrates how we might measure this by identifying whether the regulator and regulatee respond to each other in a tit for tat way at each link in the chain of interactions in the investigation as it unfolds.

Figure 1: Measuring TFT Responsive Regulation: Research Strategy 1



In order to be able to identify TFT responsiveness, we need to be able to identify two things:

*First*, what is it about *the regulatee's response* to investigation and enforcement that the regulator should be responsive to? Responsive regulation suggests that it is not the seriousness of the alleged offence to which the regulator responds, but whether the regulatee cooperates with the regulator by admitting responsibility for the (alleged) breach, correcting it, and preventing it recurring (Ayres & Braithwaite 1992, p. 36, Braithwaite 2002, p. 30).

*Second*, what dimensions of their own *regulatory enforcement behavior* should the regulator adjust in response to the regulatee's behaviour? We use Peter May and Soeren Winter's (2000, p. 149; see also Burby & Paterson 1993) conceptualisation of

Ayres and Braithwaite's responsive regulation as a style of 'flexible enforcement' that involves 'situational mixes' of 'formalism' and 'coercion'.

The degree of *formalism* in enforcement is 'the rigidity with which the rules are interpreted and applied' (May & Wood 2003, p. 119). It 'varies from inspectors who stick to the rules, to inspectors who are flexible, negotiate and try to change attitudes' (Winter & May 2001, p. 679).

The degree of *coercion* is the extent to which the application of sanctions is threatened (May & Winter 2000, p. 147). This 'varies from inspectors who are sceptical of the regulated and threaten sanctions, to trusting inspectors who never use such threats' (Winter & May 2001, p. 679; see also May & Winter 1999; 2000). More positively, it can be seen as the level of 'facilitation', that is 'the willingness of inspectors to help regulatees and be forgiving' (May & Wood 2003, p. 119).

TFT responsive regulation suggests that the regulator should start with the least formal and coercive methods of investigation and enforcement and escalate up the pyramid if and when the alleged offender fails to cooperate. The regulator should de-escalate down the pyramid of formalism and coercion when the alleged offender does respond cooperatively to correct and prevent wrong-doing. The regulator must also be nimble in quickly moving between different levels of the pyramid at any moment depending on what aspect of their 'self' the regulatee puts forward - so that the dynamic of response and counter-response is frequent and swift.

Thus at each stage of the interaction the responsive regulator should act primarily with the level of formality and coercion that is appropriate to the motivation that is operating at that level of the pyramid. At the same time, in the background, they

should threaten that they will escalate up the pyramid if it does not work, and promise to reward the regulatee by moving down the pyramid if it does.

#### *Restorative Justice (RJ) Responsive Regulation*

TFT responsive regulation suggests that front-line regulatory staff should communicate with the regulatee in a more or less explicitly threatening and formal way throughout the investigation and enforcement process (including issuing threats indirectly and then directly about further escalation) *depending* on the regulatees' response, that is, the outcome of each interaction. Explicit threats of coercion and formalism move increasingly into the foreground of the communication between regulator and regulatee as the regulatee fails to cooperate, and move increasingly to the background where the regulatee does cooperate. Facilitation and flexibility are in the foreground to begin with and move to the background in the face of lack of cooperation.

In his presentation of responsive regulation as 'restorative justice', however, Braithwaite suggests a more positive version of responsive regulation. The individual regulatory staff dealing with a matter should be as low on both formalism and coercion as they can be in all their communications with regulatees. This means being willing to cooperate with the regulatee to help them come into compliance, showing that they are willing to de-escalate down the pyramid when the regulatee comes into compliance, and never issuing threats of coercion and escalation. According to Braithwaite, cooperation and kindness breed cooperation and kindness, and treating people in an open minded and respectful manner makes them more willing to listen and cooperate (Braithwaite 2002, p. 41).

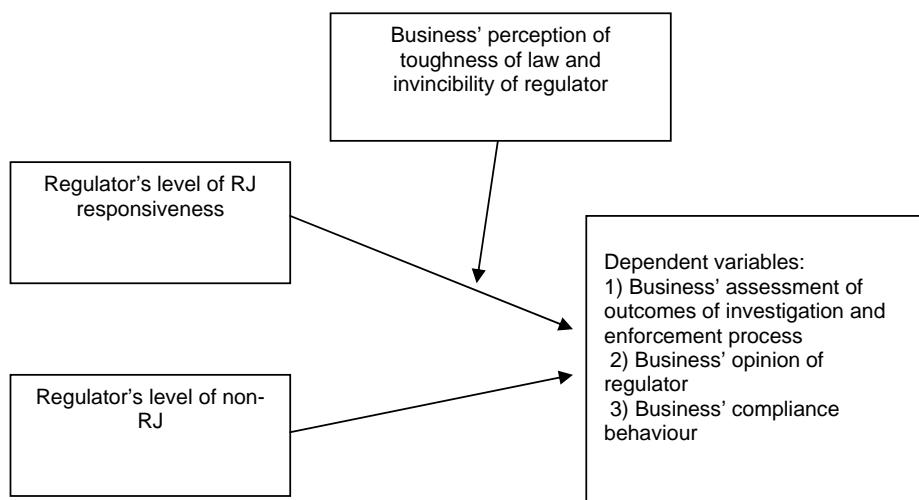
But this positive approach by *individual regulatory staff* must occur in the context of an investigation and enforcement *system* that will escalate up the pyramid to the coercion of litigation and punitive enforcement. Thus Braithwaite suggests that the regulator should not actively make threats of coercion, no matter how high up the pyramid they have progressed. It is the law, the legal system and the enforcement process itself that threatens the regulatee first in the background, and more in the forefront of the encounter as they move up the pyramid. The regulator is certainly an agent of that process of escalation: But the individual staff who deal with the alleged offender are enjoined to communicate in a way that shows their constant openness to trying to help the offender to stop the process of escalation, if the offender cooperates and complies with regulatory expectations. The regulatory enforcement staff are to present the process of escalation up the pyramid as an inexorable process to which they too are subject unless offender and regulator can work together to stop it (Braithwaite 2002, pp. 33, 119; see also Ayres & Braithwaite 1992, pp. 44-47). This process of escalation in a sense speaks for itself, rather than the regulator being expected to do anything more than allow it to progress.

Thus, in RJ responsive regulation, individual regulatory staff should communicate with the regulatee in a way that is positive (that is, low on formalism and coercion) all the way through the investigation and enforcement process. The regulator must be fair, open-minded, respectful, not stigmatizing, and, persuasive and cooperative rather than coercive, to the extent possible. The regulator should therefore, to the extent possible, at each level of the pyramid, act in accordance with the Tom Tyler's (2006) notion of procedural justice. The regulator should listen to the business's point of view, and be oriented towards remedying the harm caused and solving problems identified by the alleged breach in a way that meets the business's needs as well as the

public interest, if possible. Moreover the regulator should communicate belief in the possibility that the regulatee is capable of the highest standards of behaviour and moral responsibility.

The positive effect of positive regulatory behaviour will however only occur if, at the same time, the law in itself is regarded as tough, the regulator is regarded as invincible, and/or the regulatee believes that the enforcement process will inexorably escalate to the potential for severe sanctions in court if there was in fact a breach. This latter perception must be combined with RJ responsiveness (hence to be tested by an interaction variable) to have the expected effect. The explanatory model proposed by RJ responsive regulation to be tested is illustrated in Figure 2.

Figure 2: RJ Responsive Regulation: Explanatory Model



In both TFT and RJ responsive regulation the regulatee perceives a conditional regulatory response strategy. The difference is that in TFT responsive regulation, the regulatee should perceive that it is individual regulatory staff who read the regulatee's behavior and attitude in each and every interaction that occurs in the enforcement process and matches them with cooperation or escalation up the pyramid of formalism and explicit threats of coercion. RJ responsive regulation relies on the regulatee perceiving the legal system as threatening: individual regulatory staff should always seek to act positively, and not explicitly threaten escalation.

We expect both interpretations of responsive regulation to have a positive impact on regulatee attitudes and behaviours. The question for research is whether either or both of the two versions achieves the results predicted by responsive regulation and, if so, which does it best.

## 2. DATA AND MEASURES

### *Data*

Our data concern specific *individual investigations* by a regulatory enforcement agency, the Australian Competition and Consumer Commission (ACCC), of individual businesses accused of breaching the Australian national competition and consumer protection law, the Trade Practices Act 1974 (Cth) (TPA). The TPA applies to all Australian businesses and prohibits certain anti-competitive conduct (eg price-fixing, abuse of market power), unfair trading practices (especially misleading and deceptive advertising), non-compliance with legislated product safety standards, and unconscionable conduct in business dealings.

The TPA and the ACCC were given a substantial job to do in changing business conduct and attitudes, at least in relation to the competition side of the legislation. At the time the TPA was passed in 1974 anti-competitive practices, or ‘orderly marketing’ as it was euphemistically known, was normal business in Australia (Karmel & Brunt 1962, pp. 94-95; Marr 1980:185; Pengilley 1974, pp. 44-45). While much has changed, Australia remains a small country with little competition relative to many other countries. Many markets are dominated by only a handful or less companies (eg there are only two major grocery retailers who also control much of the general retail market) (Dignam 2005). In seeking to promote and enforce competition for the benefit of consumers, we might therefore expect the ACCC to continue to come up against an ingrained anti-competition culture.

From the late 1980s and 1990s the ACCC explicitly adopted a policy of responsive regulation, when Braithwaite himself was an Associate Commissioner of the Trade Practice Commission (as the ACCC then was).<sup>1</sup> However we expect there to be variation in the responsiveness of the ACCC’s behaviour: the ACCC has the basic conditions in place to be a responsive regulator, if it chooses to do so in particular cases, but does not always act responsively. Our study identifies whether individual investigations were handled in a responsive way or not, and whether this leads to any differences in the compliance attitudes and behaviours of regulatees.

Our study uses data from a sub-sample of a larger survey of large Australian businesses’ (ie businesses with over 100 employees) experiences of the ACCC and

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<sup>1</sup> Indeed Braithwaite attributes his development of the theory of responsive regulation in part to colleagues at the Trade Practices Commission (see Fisse & Braithwaite

1993, [pp. 230-237](#)).

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compliance with the TPA (see Nielsen & Parker 2005; Parker & Nielsen 2008). The sub-sample used for this paper consists of 141 larger businesses that had all experienced an ACCC investigation into an alleged breach of the TPA in the previous six years.<sup>2</sup> These respondents were asked to briefly describe the last specific enforcement experience they had had in the previous six years. They were then asked a series of questions about how that investigation and enforcement process unfolded, including what steps were taken by the ACCC and themselves at each stage of the process, and how they perceived the outcomes of the process, what they had learned from it, and their overall opinions of the ACCC. We discuss in more detail below how we used the responses to these questions to measure both the different dependent variables (attitudes and behaviour) and the independent variable (responsive or non-responsive regulation).

The survey had an overall response rate of 43%,<sup>3</sup> with a good match of size and industry to the whole large business population of Australia (Nielsen & Parker 2005, pp. 12-13), suggesting that it was broadly representative.

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<sup>2</sup> Note that not all 141 filled in all questions so our n's are often smaller than 141 in the tests reported below.

<sup>3</sup> This under-estimates the actual response rate because we cut 4.3% of the responses actually received from the study because those respondents were too small (less than 100 employees) for our sample of large businesses. If we, quite reasonably, assume that similarly 4.3% of the entire list of companies surveyed (including non-respondents) were “too small”, then we would have a response rate of 45%. Our response rate compares well with the 35.5% average response rates for similar questionnaire research of top management of business (Baruch 1999).

Our subsample of 141 respondents investigated by the ACCC represents a spread of investigations of breaches of both the competition and consumer protection elements of the TPA. Moreover the breaches investigated are broadly in the same proportions as the different types of breaches by larger businesses investigated in the same time frame according to ACCC records.<sup>4</sup> This suggests that our subsample is likely to be broadly representative of the population of businesses investigated by the ACCC and therefore to represent common experience of ACCC investigation and enforcement processes in action. More comprehensive data on levels of compliance by respondents and non-respondents are not available, since the ACCC is a largely reactive regulator that collects records only about complaints and the rare cases in which it investigates and takes enforcement action. The authors were not allowed access to complaints and investigation data from the ACCC and there is no other available potential data source for checking compliance before the survey period. We did check for further non-compliance after the survey – but there have only been a few enforcement actions concluded against respondents since then – not enough for any statistical analyses. Most non-compliance in this area is completely unknown as it is not subject to investigation or enforcement. This means that, as with most empirical research on business compliance, it is impossible to say how compliant or non-compliant our respondents are as compared with non-respondents. therefore we cannot be sure what selection biases may be present in our sample.

The questionnaire was to be filled in by the most senior person in the organization responsible for trade practices compliance. Forty-two percent of those who filled out a questionnaire were chief executive officers, company secretaries or chief financial

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<sup>4</sup> A table of data showing this is shown in Technical Appendix 1 and also at Nielsen & Parker (2005, pp. 14-15).

officers, and a further twenty percent general counsel or compliance managers. The person who filled in the questionnaire is in other words one who is likely to have played a central role during the identified investigation by the ACCC and therefore to be a reliable informant. The median for the length of years spent working in the organization is 6 years (with a mean of 9.54 years), and the median for the years spent in that position is 4 years (with a mean of 5.81 years). This suggests that the people filling out the questionnaire had generally been in their organizations long enough to have sufficient knowledge to fill out the questionnaire accurately.

The ACCC engages in mostly one-off interactions with businesses – although repeated complaints can lead to repeated investigations and enforcement actions. We might expect responsive regulation to work better in situations where there are more ongoing interactions than exist in the ACCC context (Ayres & Braithwaite 1992, p. 21). Nevertheless Australia is a small country and ACCC actions are highly publicised and closely watched by larger businesses. So we can expect some of the characteristics of repeated interactions to be present in the sense that business have expectations about how the ACCC will act based on how they have seen it act in the past, and what their lawyers tell them will happen. Businesses can also always expect the possibility of further complaints and ACCC investigations. This means the potential for multiple interactions is present, even if it is unusual in fact. Moreover Braithwaite and his co-author's formulation of responsive regulation does not seem to crucially depend on multiple interactions. They see game theory as suggestive, but assume that responsive regulation can work within a set of interactions unfolding in relation to one investigation and enforcement matter as in our data.

*Dependent Variables: Businesses' Assessments of the Outcomes of Investigation, Opinions of the ACCC and Compliance Behaviour*

The expectation in both variants of responsive regulation theory is that responsiveness in a regulatory interaction triggers psychological reactions in the regulatee that lead to a higher positive assessment of the outcomes of the investigation and enforcement process, also a more positive overall opinion of the regulator, and finally, in the long run, a higher level of compliance behaviour compared to those who do not experience a responsive regulator.

Each of our three main hypotheses about the effect of responsive regulation is measured with a number of dependent variables, and each measure is an index made up of a number of items.<sup>5</sup>

First, we use four measures of the businesses' *assessments of the outcomes of the investigation and enforcement process* they experienced:

- “Perception of fairness of the ACCC”: the extent to which the business that was investigated by the ACCC later believes that they were treated fairly by the ACCC throughout the investigation and enforcement process.
- “Feeling of being stigmatized”: the extent to which the investigation process and the way the ACCC handled it evoked counterproductive feelings of being marked as a “bad apple” in society in general and in the eyes of the regulator.

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<sup>5</sup> A detailed account of our operationalizations, means and standard deviations is shown in Technical Appendix 2.

- “Positive learning” in respect to legal compliance from the investigation and interaction with the ACCC.
- “Negative learning”: to what degree the business think the investigation and interaction with the ACCC taught them things that are thought to be negative to regulatory compliance.

Second, we use two measures of the businesses’ *overall opinion of the ACCC* - that is an opinion that is not limited to their assessment of the ACCC’s behavior in the particular enforcement process they experienced, but more globally:<sup>6</sup>

- “Procedural and substantive justice of the ACCC”: Previous empirical research has shown persuasively that in general compliance will be greater when regulators are perceived as procedurally just (Tyler 2006).
- “ACCC’s flexibility in its dealing with businesses”: This measure (based on three items) is also concerned with the way the ACCC treats individual organisations. But while the first measure was concerned with justice and fairness, this one is concerned with how the respondents view the flexibility of the ACCC’s opinion of, and enforcement approach to, businesses.

Third and finally, we also consider a measure that estimates the businesses’ everyday compliance behaviour – their *compliance management in practice*. The variable is constructed by adding together fourteen questions containing specific statements about what their business management actually does in order to make sure they

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<sup>6</sup> The relevant questions were asked earlier in the questionnaire than the questions concerning investigation with the ACCC – that is without reference to the investigation.

comply with the TPA. Since the measure is based on subjective evaluations of behavior instead of objective behavioral measures, it does not measure actual behavior. However, since it is based on rather specific questions about behavior we regard it as a proxy of behavior, and as a measure that is substantively different from the above measures of assessments and opinions.

#### *Independent Variables: Tit for Tat and Restorative Justice Responsiveness*

Since TFT and RJ are two theoretically unlike understandings of responsive regulation, we identify and categorize responsiveness versus non-responsiveness in two different, and alternative, ways. The data used are, however, exactly the same for both, namely information from 141 Australian businesses that within the previous six years had experienced an ACCC investigation into an alleged breach of the TPA (as described above).

The respondents were asked to tick yes or no, or estimate on a scale from “fits very badly” to “fits very well”, in relation to a series of very specific questions about their own and the ACCC’s behaviour in the investigation process. They were *not* asked to subjectively assess whether or not they perceived the regulatory behaviour of the ACCC to be “responsive”. The assessment of the investigation and enforcement process as responsive or not – according to the two theories - was done afterwards by the authors as researchers, based on explicit criteria (which we explain in more detail below for each theory). The categorisation of the ACCC’s behaviour as responsive or not is *not* therefore based on each individual business’ own subjective perception of “responsiveness” as such. It is however based on firms’ perceptions of specific aspects of their own and the ACCC’s attitudes and behaviour. The researchers have used these measures of firm perception to code each interaction as responsive or not,

according to each of the two versions of responsive regulation. Ours is therefore a test of the extent to which the ACCC manages to get businesses to perceive their behaviour as responsive or not. Further research would also gather information from staff of the regulator as to how responsive they intended their behaviour to be, and from third party observation of the interaction (see Mascini & Van Wijk 2009; Waller 2007).

#### *Measuring Tit-for-Tat Responsiveness*

TFT responsive regulation states that enforcement staff should start at the bottom of the enforcement pyramid and then respond ‘tit for tat’ to the regulatee’s response to the regulator throughout the enforcement interaction.

We identify TFT responsiveness by measuring whether or not the ACCC’s actions at each of three stages of the investigation and enforcement process matches (‘responds’ to) what the business did at the previous stage (see Figure 1 above). To measure this, we coded the ACCC and business actions and reactions at each sub-stage of the investigation process as either positive or negative. We then checked whether the positivity or negativity of the action of each party matched the positivity or negativity of the other party’s action at the previous stage:

- If the business makes a positive reaction at one stage, and the ACCC responds positively at the next (or vice versa – the ACCC is positive and then so is the business), we call this “positive TFT responsiveness”.
- If one side acts negatively at one stage, and the other responds negatively then we label this “negative TFT responsiveness”.

- If the responses do not match (ie a positive and negative) then we label this “TFT non-responsiveness”.<sup>7</sup>

This way of measuring is a conservative test of the theory of TFT responsive regulation, since the criteria for interactions to be categorized as responsive are strict.

Theoretically, TFT responsive regulation would result in a situation where every interaction throughout all steps of the interaction (at all measuring points) should be responsive (either negatively or positively) to the one before. This would mean that every set of interactions should be either “100% positive” or “100% negative”.

However, in our data none of the investigations were totally positive or negative spirals of interactions. This means we could not identify any chains of totally TFT responsive interactions.

Therefore, using these data we have to test whether or not TFT responsiveness – either positive or negative – between one stage and the next at each individual measuring point (not over the whole set of interactions) has different effects on regulatees’ attitudes and compliance behaviour compared with those interactions that were “non-responsive”. Note that responsive regulation theory does not hypothesise that positive and negative responsiveness should have different results to each other.

The point of the theory is that it is the fact that the response is matching (ie responsive) at all rather than whether it is positively or negatively responsive that should have the desired effect. We would however expect those with matching

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<sup>7</sup> The details as to exactly how we coded the actions and reactions and calculated their positiveness or negativity, and also in how many cases the ACCC’s behaviour is categorized as positively responsive, negatively responsive and non-responsive are provided in Technical Appendix 3.

responses (ie those that are responsive) to have different results to those without matching responses.

In other words, in order to test the expectations of TFT we would need to be able to identify entire sets of interactions with matching responses. However, in our data none of the reported interactions between the ACCC and the regulated businesses were unbroken chains of matching responses. Therefore, we had to categorize each stage of the investigation and enforcement interaction process as either TFT responsive or not, and limit ourselves to testing the plausibility of the TFT-theory at single points of the interaction instead of along the entire chain.

To test the plausibility of the TFT theory we use T-tests to compare the mean score of the attitudes and behaviours of our two groups (TFT-responsive and Non-TFT-responsive).<sup>8</sup>

#### *Measuring Restorative Justice Responsiveness*

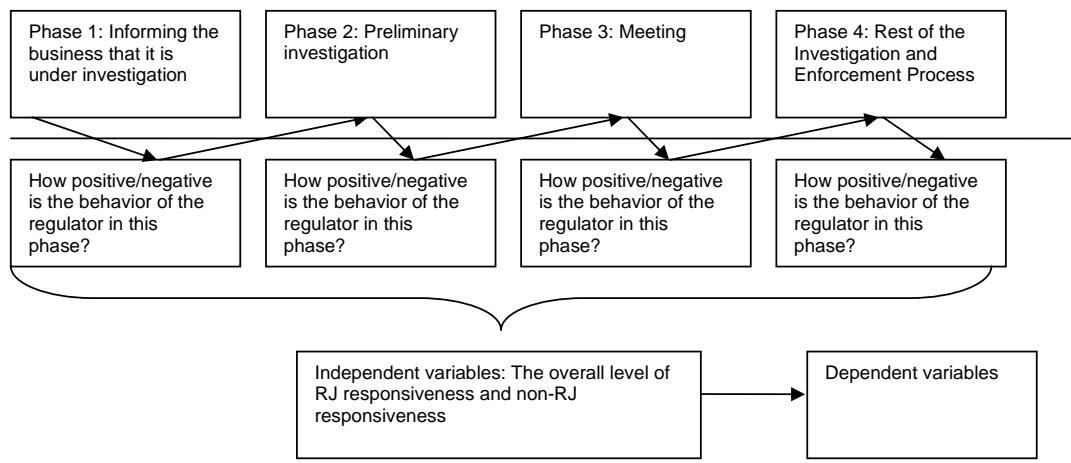
RJ responsiveness states that the regulator's behavior does not have to be responsive to the business in the sense of matching the positivity or negativity of the business. The RJ theory of responsive regulation is that the more positive the regulator manages to be, the more "responsive" it is. Negative behaviour will backfire. Therefore we do not need to measure the behavior of the regulatee to see how it relates to the behaviour of the regulator. We do need to measure both the levels of positive or RJ

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<sup>8</sup> The TFT-theory is a single-variable theory (TFT-responsive interaction or not) and therefore we use a single-variable statistical test and not a multivariate test like OLS regression.

responsiveness and the negative (non-RJ) behaviour shown by the ACCC throughout the entire series of interactions (see Figure 3).

Figure 3: Measuring RJ Responsive Regulation



We used the same stages of the enforcement interaction for measuring RJ responsiveness as we used for measuring TFT responsiveness. But we were also able to add another earlier stage about the way the ACCC initiated the case (since we did not have to match the ACCC's behavior to earlier business behavior): In RJ responsiveness the regulator is not supposed to match the behaviour of the regulatee but should always be accommodating and constructive. It is therefore important that the regulator already behaves in this way when it approaches the alleged business in the very beginning of the investigation.

We coded the ACCC's attitudes and behaviours at each stage as exhibiting RJ responsiveness or lack of RJ responsiveness.<sup>9</sup> As described above (see Figure 2), it is a precondition for RJ responsiveness that the business must perceive the legal system and the enforcement action itself as inexorably moving up the pyramid, even though the regulatory staff the business deals with should not be explicitly threatening coercion and escalation. To include this part of the theory of RJ responsiveness in our test, we measure businesses' perception of the toughness of the law and invincibility of the regulator.<sup>10</sup>

There is not a huge variation in this measure, so we may not expect to find much explanatory effect. It makes sense that the one regulator would have a broadly stable

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<sup>9</sup> The criteria for coding are shown in detail in Technical Appendix 4 (Table A4.1).

<sup>10</sup> The measure used is shown in Technical Appendix 4 (Table A4.2). This measure is an index made up of items John Braithwaite suggested should be used to measure 'image of invincibility' when responding to our previous analyses of our data (Parker & Nielsen 2007). We put the items Braithwaite had suggested into a factor analysis, excluded those that did not fit and used the rest for this measure.

perception among different businesses. A further step in testing responsive regulation would be to compare different regulators with quite different images of invincibility (or vincibility!).

The ACCC's score for RJ responsiveness in each case was multiplied with the respondents' score for the measure of business' perception of toughness of law and invincibility of regulator to create the interaction variable that is needed to test the effect of RJ responsive regulation. The effect of RJ responsiveness compared to non-responsiveness is finally tested using OLS regressions.

### 3. TESTING THE EFFECTS OF RESPONSIVE REGULATION

#### *Testing the Effects of Tit for Tat Responsiveness: Results*

Below (in Table 1) we show summary results of tests of whether the respondents' assessments of the outcomes of the investigation and enforcement process, their overall opinions of the ACCC, and their compliance behavior differed according to whether the ACCC behaved TFT responsively or not at each stage.<sup>11</sup>

Remember that theoretically, TFT responsive regulation should result in a situation where every interaction throughout all three stages should be responsive (either negatively or positively) to the one before. However, in our data we did not find any unbroken chains of totally positive or negative spirals of interactions. We also find relatively few cases - only about a third of all cases - in which the way businesses remembered the ACCC as behaving could be categorised as being TFT responsive (either positive or negative) at each stage of the process. Therefore we conduct our

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<sup>11</sup> The full results are available in Technical Appendix 5.

tests for TFT responsiveness at each stage of the unfolding investigation and enforcement process, and for each of our three groups of dependent variables.

This means that in one sense our data do not provide a robust and generalisable test of the impact of TFT responsiveness since our regulator does not in fact turn out to be using true TFT responsiveness. It may be that we would find quite different results with a regulator that more successfully seeks to implement TFT responsiveness. On the other hand, we know that the ACCC had espoused the philosophy of responsive regulation: indeed it was the inspiration for the theory. This suggests that in real life it is quite difficult for regulators to be perceived to behave, in a way that is TFT responsive, even if they are trying to behave TFT responsively. Perhaps continuing responsiveness by both parties is more a normative ideal of how parties should interact – and perceive each other to interact - than an actual empirical phenomenon (see Mascini & Van Wijk 2009; Nielsen 2006). In that case the ACCC might be a typical regulator.

Remember also that TFT responsive regulation theory does not hypothesize that positive and negative responsiveness should have different results to each other. The point of the theory is that it is the fact that the response is matching (ie responsive), not whether it is positively or negatively responsive, that should have the desired effect. RJ responsiveness on the other hand emphasises the need for positive, rather than negative or non-, responsiveness.

The asterisks in Table 1 indicate whether there was a significant difference in respondent's attitudes and behaviors according to whether they way they remembered the ACCC as behaving was TFT responsive or not. The number of asterisks (from one to three) indicates how strong the significant association is. The up and down arrows indicate whether TFT responsiveness is associated with a higher rating for the

relevant opinion or behavior (as hypothesized) or a lower rating. Blank cells are those where there was no significant difference in the scores between cases of responsiveness and non-responsiveness.

Table 1: Summary Results of Tests of TFT Responsiveness: Is There a Difference in Outcomes Depending on Whether the ACCC is TFT Responsive or Not?

	RESPONDENT'S ASSESSMENT OF OUTCOME OF INVESTIGATION AND ENFORCEMENT PROCESS				RESPONDENT'S OVERALL OPINION OF THE ACCC (AFTER INVESTIGATION)		RESPONDENT'S COMPLIANCE BEHAVIOR (AFTER INVESTIGATION)
Was level of ACCC TFT responsiveness at each stage associated with a significantly higher or lower rating of...	Assessment of Fairness of ACCC in Investigation Process	Feeling of Being Stigmatized in Investigation Process	Positive Learning from Investigation Process	Negative Learning from Investigation Process	General Opinion of Procedural & Substantive Justice of ACCC	General Opinion of Flexibility of ACCC	Compliance Management in Practice
At Stage 1: Beginning of Preliminary Investigation		* ↑					
At Stage 2 (a): Preliminary Investigation: Meeting	*** ↑						* ↑
At Stage 2 (b): Preliminary Investigation: Next Step		* ↓					
At Stage 2 (c): Preliminary Investigation: Case Dropped	*** ↑	*** ↓					
At Stage 3 (a): Rest of the Case: Atmosphere	*** ↑	* ↓					
At Stage 3 (b): Rest of the Case: Final Resolution		*** ↑			* ↓	* ↓	* ↑

NOTE: Asterisks show significance of any association: Statistics: T-test. Two-tailed sig. \*\*\* = p< .005 \*\* = p< .01 \* = p< .05 (two-tailed) Arrows show whether score on outcome variable went up or down with TFT responsiveness.

There are relatively few cases - only about a third of all cases<sup>12</sup> - in which businesses remembered the ACCC behaving in a way that was categorized as TFT responsive (either positive or negative). In the majority of cases at each point of the investigation our respondents did not remember the ACCC to have responded in similar vein to the businesses' actions and behaviors immediately before (despite the fact that we might have expected more of a 'consistency' bias in people's memories). Because of the small number of cases in which the ACCC was categorized as behaving TFT responsively, we have small n's for many of our tests and therefore we need to exercise caution in interpreting our results.

Overall the most consistent finding is that TFT responsiveness is associated with businesses' feeling of being stigmatized or not at the end of the investigation/enforcement matter – although this is relatively weak in some cases. However this is difficult to interpret as the direction of the association differs at different stages. Sometimes greater TFT responsiveness is associated with a lesser feeling of being stigmatized (as hypothesized), but, sometimes it is unexpectedly associated with a stronger feeling of being stigmatized. Overall, at the point of the final outcome, we find a significant association between TFT responsiveness and respondents' ratings of the flexibility and procedural and substantive justice of the ACCC, but again in the 'wrong' direction. TFT responsiveness is associated with lower ratings of the flexibility and justice of the ACCC. These surprising results cannot be explained by saying that perhaps we had an over representation of cases of negative responsiveness in our data. There are in fact more cases of positive responsiveness than negative responsiveness in the data.

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<sup>12</sup> See Technical Appendix 3.

At three stages TFT responsiveness is, not surprisingly, significantly associated with greater ratings of the ACCC as fair. It is also weakly significantly associated with greater compliance management in practice at two stages. But there is no significant difference between respondents with experiences of the ACCC as TFT responsive and TFT non-responsive in terms of their ongoing positive and negative learning.

Overall, then, our test of TFT responsiveness gives no particular support for the effectiveness of TFT responsiveness at promoting the outcomes we hypothesized it should promote. This may be because there were so few cases in which the ACCC was categorized as behaving TFT responsively.

#### *Testing the Effects of RJ Responsive Regulation*

We conducted regression analyses following the explanatory model shown in Figure 1 to test the relative effect of both an interaction variable made up of the ACCC's RJ responsiveness in interaction with respondent's perception of the invincibility of the ACCC and the law, and non-RJ responsiveness in relation to our three groups of dependent variables. The results are shown below in Table 2, with significant associations shown in bold.

Table 2: Explaining Variation in Outcomes Depending on Whether the ACCC Behaves RJ Responsively or Not

	RESPONDENT'S ASSESSMENT OF OUTCOME OF INVESTIGATION AND ENFORCEMENT PROCESS				RESPONDENT'S OVERALL OPINION OF THE ACCC (AFTER INVESTIGATION)		RESPONDENT'S COMPLIANCE BEHAVIOUR (AFTER INVESTIGATION)
	Fairness of ACCC in Investigation Process	Feeling of Being Stigmatized in Process	Positive Learning from Process	Negative Learning from Process	Procedural & Substantive Justice of ACCC	Flexibility of ACCC	Compliance Management in Practice
<b>RJ Responsiveness Combined with Perception of Toughness of Law &amp; Regulator</b>	.37*** (4.45)	-.07 (0.76)	.34*** (3.43)	-.31*** (3.21)	.21** (2.70)	.15 (1.78)	.15 (1.73)
<b>Level of non-RJ Responsiveness</b>	-.47*** (5.69)	.44*** (4.62)	.05 (0.47)	.27** (2.77)	-.42*** (5.31)	-.34*** (4.17)	.05 (0.62)
<b>Model statistics:</b>							
N =	91	90	92	91	140	140	140
Adjusted R <sup>2</sup>	0.39	0.19	0.10	0.16	0.16	0.10	.02
F-value of full model	27.97***	11.22***	5.90	9.59***	14.78***	8.88***	2.21

Statistics: \*\*\* = p< .005; \*\* = p< .01; \* = p< .05 (two-tailed). Cell entries are standardized regression coefficients with the absolute value of t-statistics in parentheses.

Here we find significant effects in the direction we would expect in relation to all variables – except compliance management in practice, the one variable that best measures concrete behavior by our respondents. RJ responsiveness in the investigation and enforcement process therefore seems to better predict a range of attitudes and opinions than does TFT responsiveness. (Although we need to be

cautious about this conclusion because we have had to measure two versions of the theory differently and therefore in ways that are not directly comparable.) Therefore the RJ version of responsive regulation seems to better encapsulate what it is about the way firms are treated in the investigation and enforcement process that makes a difference to their attitudes at the end of that process. However, it does not explain differences in the best measure we have of concrete behavior.

We also ran the regression without including the variable “perception of the toughness of the law and the regulator” as part of an interaction variable with RJ responsiveness, but instead with just RJ responsiveness as the variable. We found little difference in the results. It may therefore be that RJ responsiveness in itself simply leads to more positive attitudes to the ACCC. The businesses’ perceptions of the toughness or otherwise of the law and regulator make little difference.

Our test of RJ responsiveness therefore suggests that the combination of deterrence with cooperation/accommodation has little salience to the results. It is the positivity of RJ responsiveness that makes a difference to opinions and attitudes – not the combination of positive cooperation at the face to face level with the perception of inexorability of tough escalation in the background. This, then, is not in fact ‘responsive’ regulation in the sense of a combination of enforcement strategies, but rather accommodating, cooperative behaviour by the regulator breeding an accommodating, cooperative attitude on the part of the regulated. We have no evidence that this accommodating, cooperative attitude actually leads to changed behavior. Indeed there are more hints of changed behavior (compliance management in practice) in our test of TFT responsiveness than RJ responsiveness. Perhaps TFT responsiveness — with its more explicit emphasis on coercion as well as cooperation and its concern with outcomes at each stage of the process — is the better way to

bring the threat of deterrence into the enforcement process to actually change behavior.

### *Limitations of Research*

There are some potential limitations to our research strategy as a measure of alternative versions of responsive regulation that should be borne in mind:

We have only data about business memory of how the investigation process unfolded, not from the ACCC's point of view or the point of view of an external observer. We also have only information taken from one survey at one point in time rather than throughout the process itself and later on. Further tests of responsive regulation could triangulate data from regulators, regulatees and external observers and collect data at different points in time (see for example Braithwaite et al 2008).

A further limitation of our study is that all our data relates to the one regulator. This has advantages in terms of holding constant the type of offences being investigated and range of other circumstances. But on the other hand, a lot of the theory of responsive regulation relates to resources and skills that any one regulatory agency might simply have or not have – for example, a pyramid of strategies, general policies of how to progress matters up the pyramid and an image of being an effective regulator. So the next step to test responsive regulation would be to compare different regulators who might be expected to be more or less responsive regulators for different reasons. This would also tell us how typical the ACCC is in its failure to have businesses perceive it as a TFT responsive regulator. We have tested responsive regulation in one particular context – reactive, one-off regulatory interactions. But it

will mean different things and perhaps be more or less effective in different contexts and depending on a range of other factors including:

- How much discretion do the formal rules give the regulator in relation to processes of rule-making and inspection, assessment of the seriousness of possible breaches, and the means and levels of sanctioning?
- Does the regulator have the final say on the disposition of the case, or must it prosecute the matter in court?
- How much consensus is there in general on the policy objectives of the regulation being enforced?
- How serious and common are the specific breaches under enforcement?
- How settled or ambiguous is the application of the law to the type of cases under consideration?

This paper is a preliminary step in restating a nuanced policy-oriented theory in terms of a coherent and precise set of individual predictions (see also Nielsen 2006). We hope to stimulate further ideas about the operationalization and testing of responsive regulation. Nevertheless the possibility remains that responsive regulation is, by its very nature, a theory that must be implemented differently in each situation according to the context, and that while specific sub-elements of the theory may be testable, it is not possible to test the whole theory in a generally applicable way.

#### 4. CONCLUSION

In this paper we have operationalized and tested two alternative interpretations of responsive regulation — tit for tat and restorative justice responsiveness — in the

context of business experiences of enforcement of Australia's federal competition and consumer protection laws. Because responsive regulation is a complex theory that makes predictions about very specific and nuanced types of interactions and communications between regulators and regulatees, it is difficult to measure. The difficulty that we as researchers have in operationalizing and testing responsive regulation is a difficulty that is likely to be shared by regulatory staff seeking to implement responsive regulation in practice. Both TFT and RJ versions of responsive regulation require regulatory staff to have excellent communication and relational skills in order to convey a complex set of messages about the threat of regulatory enforcement and the possibility of cooperation in a contextually sensitive way. Both versions of responsive regulation also require the regulatory enforcement agency as an institution to be able to track what is happening in each matter at each stage in not only a technical sense, but also an emotionally intelligent way – so that escalation and de-escalation up and down the pyramid occurs, and is communicated appropriately.

We know that regulators often struggle to have this sort of information tracked even in a technical sense. It is even more difficult for them to have the integrity required to choose and follow through on both the technical and relational-emotional aspects of implementing responsive regulation in practice. Even if regulators have done everything they can to act responsively, there is still the additional complication of how regulatees actually perceive their behaviour, as our data measures. For example, as Waller (2007) shows, individual regulatory interactions will often be interpreted suspiciously by regulatees, even if this is not the regulator's intention, because of the broader context of what a regulator has done in the past and may do in the future (see also Mascini & Van Wijk 2009).

Responsive regulation is particularly challenging where different staff (even different regulators) deal with an alleged offender at different times or in relation to different matters. For example, a typical ACCC matter might go from call centre to investigators to senior enforcement managers and lawyers, to Commissioners. Responsive regulation expects all these people to have a good understanding of what has gone before and be able to act and communicate consistently. Beyond this, effective communication of a responsive regulation strategy would require communication between different regulators dealing with similar compliance issues at the state and federal level, or specialist industry and generalist consumer regulators (Braithwaite 2008, pp. 87-108).

It is not just the regulator that may have different personnel handling each stage of any interaction with an alleged offender. There are also a range of people within the business organization that may be involved in communications with the regulator at different stages – and more importantly have different reactions (or lack of any reaction) that affect whether the business as whole changes its attitude and behaviour. It is not necessarily surprising, then, that we find little evidence of even enforcement interactions that were apparently perceived as amounting to responsive regulation having any impact on business behaviour. Just because those staff concerned with regulation and compliance experience responsive regulatory enforcement does not necessarily mean that the message will translate to the broader organization. The potential for responsive regulation is therefore bounded by the capacity for institutional integrity of the regulatory enforcement agency, as previous studies have shown (Mascini & Van Wijk 2009; Waller 2007). But it is also bounded by the capacity for institutional integrity of the business firm itself, where firms are the subject of enforcement (as in our data). One factor that might make a difference is

whether there is a single very senior responsible person in the firm, probably the CEO, who takes responsibility for the interaction with the regulator and can also memorialise what they have learnt from that interaction in the policies and practices of the firm. Whether or not the firm also has a lawyer or compliance professional who can take responsibility for helping the CEO and the firm respond professionally, positively and creatively to the enforcement interaction might also make a difference to whether responsive regulation is possible in practice, just as the training and skills of regulatory enforcement staff will likely make a difference. We leave further exploration of the relationship between individual officers inside the firm, the firm itself and the regulatory relationship to other papers and researchers.<sup>13</sup>

The two versions of responsive regulation conceptualize and operationalize the relationship between the regulator's use of coercion and broadly negative messages and of cooperation and broadly positive messages differently:

TFT responsiveness gives each individual regulatory staff member who is dealing with an alleged offender the job of calibrating in detail the exact mix of coercion and cooperation in their messages to the regulatee according to where they are on the pyramid. In other words, TFT responsive regulation gives the individual regulatory staff member a crucial role in bringing coercion, or the threat of coercion, into the forefront of the regulatory encounter where an alleged offender behaves like a 'bad apple'.

RJ responsive regulation leaves the role of coercion more to the regulatory system, rather than the regulator as an individual. RJ responsiveness emphasizes the

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<sup>13</sup> We have begun to explore some of these issues from the same data set in Parker et al 2009.

normative requirements of fairness, respect and cooperation on individual regulatory staff, and leaves coercion to the law. RJ responsiveness is simpler to implement since it requires a relatively consistently positive approach by each individual regulator – although it requires that the systemic, institutional back-up of a pyramid of sanctions that will almost automatically come into operation.

It is not surprising then that we find a clearer effect of RJ responsiveness on positive attitudes on the part of regulatees. Positive regulator behaviour breeds positive regulatee attitudes. But we do not know if this simply leaves ‘good apples’ as good apples and ‘bad apples’ as bad apples – albeit with better attitudes. On the other hand we find a hint in our results that if TFT responsiveness can be implemented effectively – and this is quite a big if – that it may do more to force change in compliance management behaviour. This makes analytic sense. TFT responsiveness brings coercion into the equation more clearly – albeit in a way that may be difficult to implement. Human relationships and interactions are incredibly complex and contradictory, so that what seems inconsistent and contradictory might not be as impossible in practice as we imagine.

More micro-research is needed on the very language or rhetoric of how regulators communicate threat and cooperation, and how regulatees ‘hear’ those messages in the light of what else they know of that regulator and the regulatory and legal system more broadly – and how, if at all, it gets translated into organizations. One fruitful avenue for further research might be to pull apart and reassemble the building blocks of both RJ and TFT responsive regulation to examine more closely to what extent regulatees’ different background perceptions of the regulatory system might affect how they perceive and respond to TFT threats of coercion. RJ responsive regulation hypothesises that the background threat of a legal system with big guns should give

teeth to a consistently positive enforcement style. We found no evidence of this, but further research comparing experiences with different regulators with different regulators is needed. Conversely, we might hypothesise that threats directed tit for tat at regulatees by individual enforcement staff might be more effective where there is a background perception of the law and the regulator as fair, just and reasonable. Certainly the theory of responsive regulation raises a number of intriguing questions and possibilities about the potential for regulatees' experiences and perceptions of both threat and cooperation at the level of individual encounters with enforcement staff and reputation of the law and regulatory system as a whole to interact and connect with plural internal motivations to influence compliance attitudes and behaviours with profound effects on whether regulation meets its goals or not.

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**TECHNICAL APPENDIX 1: COMPARISON OF ALL LARGER BUSINESSES INVESTIGATED ACCORDING TO ACCC ANNUAL REPORTS AND 141 SURVEY RESPONDENTS SELF-REPORTING ACCC INVESTIGATION BY TYPE OF (ALLEGED) BREACH**

(Alleged) Breach	All Larger Businesses Investigated by ACCC (based on ACCC Annual Reports) <sup>14</sup>	All Respondents Self-Reporting ACCC Investigation (whether in ACCC Annual Reports or not)	Number of Respondents as Proportion of Total Investigated According to ACCC Annual Reports (%)
Anti-competitive agreements s45	58 (14.5%)	28 (19.9%)	17/58 (25.9%)
Other anti-competitive conduct	100 (25%)	33 (23.4%)	21/100 (21%)
Unfair practices (Pt V incl s52 misleading and deceptive conduct)	131 (32.7%)	49 (34.8%)	26/131 (16.8%)
Product safety standards (Part V)	10 (2.5%)	9 (6.4%)	0/10
GST related issues	119 (29.7%)	14 (9.9%)	24/119 (20.2%)
Unconscionable conduct (Part IVA ss 51AA and 51AC)	16 (4%)	6 (4.3%)	5/16 (31%)
Investigation related to merger approval <sup>15</sup>	0	9 (6.4%)	-
Other/not able to classify	4 (1%)	7 (5%)	1/4 (25%)
<b>TOTAL</b>	<b>401</b>	<b>141</b>	<b>81/401 (20.2%)</b>

NB Respondents could have more than one type of (alleged) breach involved in a single investigation.

A total of 25 businesses had had more than one ACCC investigation in relation to different matters and

<sup>14</sup>. Note however that non-respondents with less than 100 employees have not necessarily been deleted from this list. Respondents that self-reported less than 100 employees have been checked and deleted from the data in the other column.

<sup>15</sup>. This type of investigation was excluded from our definition of the type of investigation that we were intending to include in the study, since we were only interested in investigations that might lead directly to enforcement action, not investigations related to decisions about approvals of potentially breaching conduct such as anti-competitive mergers. Such cases had therefore been excluded from the ACCC list. They were later excluded from those who had had an ACCC investigation as well.

at different times in the relevant period, of which 7 responded to the survey. The questions made it very clear that they should respond only in relation to the latest investigation.

**TECHNICAL APPENDIX 2: MEASURES OF DEPENDENT VARIABLES:  
ASSESSMENT OF OUTCOME OF INVESTIGATION, OVERALL OPINION OF  
REGULATOR AND COMPLIANCE MANAGEMENT IN PRACTICE**

Table A2.1: Four Measures of Business Respondents' Assessment of Outcome of Investigation

<b>Measures</b>	<b>Items Included in Each Measure</b> (Scale from 1-5 'Totally disagree' to 'Totally agree'.)	<b>Mean</b> (st. dev.)	<b>Whole Measure</b>
<b>Perception of Fairness of ACCC</b>	We were treated fairly <sup>16</sup>	3.04 (1.19)	Mean: 2.75 Std. dev.: 0.86 Min: 1 Max: 5 Cronbach Alpha: 0.69
	In the end the ACCC gave us credit for being cooperative	2.85 (1.08)	
	The ACCC were balanced in their criticism of us. They focused on both good and bad things	2.30 (0.91)	
<b>Positive Learning</b>	We ended up with a better compliance program	3.66 (1.39)	Mean: 3.31 Std. dev.: 0.92 Min: 1 Max: 5 Cronbach Alpha: 0.83
	We learned that the best strategy is to be cooperative with the ACCC	3.62 (0.86)	
	We learned a lot about the Trade Practices Act and how to comply with the law	3.23 (1.18)	
	We learned a lot about weak spots in our own organisation	3.19 (1.15)	
	We were pleased to have the opportunity to remedy the harm caused by the conduct	2.74 (1.20)	
<b>Feeling of Being Stigmatized</b>	We are/were ashamed of having violated the law <sup>17</sup>	2.54 (1.46)	Mean: 2.26 Std. dev.: 0.95 Min: 1 Max: 5 Cronbach Alpha: 0.73
	The case gave a lot of bad publicity	2.40 (1.26)	
	We felt stigmatized as criminals	2.16 (1.17)	
	The ACCC has held this incident against us ever since	2.09 (1.02)	
<b>Negative Learning</b>	We learned that you need to fight hard against the ACCC	2.84 (1.20)	Mean: 2.25 Std. dev.: 0.76 Min: 1 Max: 5 Cronbach Alpha: 0.48
	We learned to be more careful about creating things that might be used as evidence against us	2.49 (1.25)	
	We learned more about how to get away with breaches of the Trade Practices Act	1.37 (0.57)	

<sup>16</sup> The relevant item on the survey was actually asked in reverse to what is shown here. The mean has been reversed to reflect the wording shown on the Table.

<sup>17</sup> Note that business people could feel ashamed as either stigmatization (which is not consistent with reintegrative shaming) or reintegrative shaming (which is consistent with responsive regulation).

However stigmatization must involve a feeling of shame together with other things, therefore the feeling of shame has been included in the index.

Table A2.2: Two Measures of Business Respondents' Overall Opinion of Regulator

<b>Measures</b>	<b>Items Included in Each Measure</b> (Scale from 1-5 'Totally disagree' to 'Totally agree'.)	<b>Mean Response</b> (st. devn)	<b>Whole Measure</b>
<b>Procedural and Substantive Justice of the ACCC</b>	The ACCC treats Australian organizations as trustworthy	(3.43)	Mean: 3.20 Std. dev.: 0.66 Min: 1.33 Max: 5 Cronbach Alpha: 0.87
	The procedures of the ACCC are transparent	3.34 (1.05)	
	The ACCC are accountable	3.41 (1.10)	
	Most organizations get what they deserve when dealing with the ACCC	3.07 (0.79)	
	The ACCC are reasonable	3.09 (0.87)	
	Decisions made by the ACCC are based on facts	2.94 (1.04)	
	The ACCC are willing to listen to companies'/organizations' point of view	2.87 (0.98)	
	The ACCC are just	2.94 (0.87)	
	The ACCC are fair	3.11 (0.90)	
<b>Flexibility of the ACCC</b>	The ACCC are open-minded and willing to change its mind about organizations	2.94 (0.99)	Mean: 2.72 Std. dev.: 0.71 Min: 1 Max: 4.67 Cronbach Alpha: 0.62
	The ACCC are not keen on taking organizations to court	2.77 (0.85)	
	The ACCC does not stigmatize organizations that breach the law	2.48 (0.99)	

**Table A2.3: Measure of Business Respondents' Compliance Management in Practice**

<b>Items Included in Measure</b> (Scale from 1-5 'Totally disagree' to 'Totally agree'.)	<b>Mean Response</b> (st. devn)	<b>Whole Measure</b>
In my organization compliance advice is rarely ignored by the board (If you don't have a board, please skip this question)*; <sup>18</sup>	4.40 (0.98)	Cronbach Alpha: 0.90  Mean: 3.96 Std. dev. = 0.55 Min = 1.85 Max = 5.00
In our organization the people responsible for compliance find it easy to get access to top management;	4.29 (0.76)	
In my organization compliance problems are quickly communicated to those who can act on them;	4.18 (0.78)	
In my organization compliance advice is rarely ignored by line managers*;	4.13 (0.77)	
In my organization systemic and recurring problems of non-compliance are always reported to those with sufficient authority to correct them;	4.06 (0.71)	
Compliance requirements of laws, regulations, codes and organizational standards are integrated into my organization's day to day operating procedures;	4.12 (0.80)	
Managers in our organization know what aspects of compliance they are responsible for;	3.92 (0.68)	
Compliance failures are always investigated to understand their cause;	4.11 (0.71)	
In our organization everyone knows where the buck stops for compliance;	4.02 (0.78)	
In my organization we review our compliance program on a regular basis;	3.79 (0.91)	
My organization allocates adequate resources to enable the implementation of the compliance policy;	3.65 (0.95)	
My organization is one of those organizations that try to have the best compliance of any organization in the country;*	3.18 (1.14)	
My organization invests a lot of time and money in compliance training.	3.71 (0.97)	

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<sup>18</sup> Items that are asterisked were actually asked in reverse on the survey to what is shown here. The mean response has also been reversed to reflect the wording shown in the table.

### **TECHNICAL APPENDIX 3: MEASURES FOR IDENTIFYING POSITIVE, NEGATIVE AND NON- TFT RESPONSIVENESS**

The three stages begin with the businesses' response to finding out they are under investigation, and the ACCC's subsequent conduct of the preliminary investigation and end with the final outcome of the case. (To deal with different contingencies in the way the ACCC handled the different stages of each case we also have various alternative measures at two of these stages.)

In brief, *Stage One* is the ACCC's response to the businesses' reaction when they found out that the ACCC was investigating their organization:

- First we identify whether the business reacted positively or negatively to finding out it was under investigation: The businesses' reaction is identified as clearly positive where the business showed a high degree of being ashamed *and* a high degree of being embarrassed *and* a low degree of irritation *and* a low degree of being angry. A clearly negative response is the opposite (see Ahmed et al 2001:229-240).
- Second we identify whether the regulator (the ACCC) reacted positively or negative. As positive behaviour at stage One we categorize e.g.: "They wrote a letter detailing the ACCC's concerns and asked for our comments and a response to those concerns..." and "They offered us a meeting where we could talk about the allegations..." while as negative behaviour we categorized e.g.: "They threatened they would take us to court..." and "They issued a press release about the investigation".
- Third we measure whether the response of the regulator (the ACCC) matches the positivity or negativity of the regulatee: If the business reacts positively and the ACCC reacts positively, the interaction is categorised as 'positively responsive'. If the business reacts negatively, and the ACCC responds to that reaction negatively, it is 'negatively responsive'. If the interaction does not fit into either of these categories, the ACCC is categorised as 'non-responsive'.

For *Stage Two and Three* we went through a similar procedure, except for the fact that the next stages of the investigation could develop in different directions. In Stage Two there could be a meeting or not, and the case could be dropped or not. And in Stage Three there could – if the case continued – be continuing interactions or the case could go straight to being resolved. To deal these with different contingencies in the way the development of the case went we have at Stages Two and Three operationalized various alternative measures.

<b>Measure</b>	<b>Items Included</b>	<b>Categorization as Positive, Negative or Non-Responsive</b>
<b>Stage 1: Beginning of Preliminary Investigation</b>		
How most managers in the <b>business reacted to finding out</b> about ACCC investigation:  <i>Scale of 1-5 ('to a very low degree to 'to a very high degree').</i>	<p><i>Positive attitudes:</i> Ashamed Embarrassed</p> <p><i>Negative attitudes:</i> Irritated Angry</p>	<p><i>Positive attitude</i> = Mean score <math>\geq 2.5</math> for positive attitudes <i>and</i> mean score <math>&lt; 2.5</math> for negative attitudes.</p> <p><i>Negative attitude</i> = Mean score <math>\leq 2.5</math> for positive attitudes <i>and</i> mean score <math>&gt; 2.5</math> for negative attitudes.</p> <p>No. of cases of pos. attitude: 19</p> <p>No. of cases of neg. attitude: 85</p> <p>No. of cases of mixed attitudes: 18</p>
Was the ACCC's <b>conduct of the preliminary investigation</b> responsive to how the business managers reacted to finding out they were under ACCC investigation?  <i>Yes or no answers. Yes =2; No =1.</i>	<p><i>Positive behaviours:</i></p> <p>They wrote a letter detailing the ACCC's concerns and asked for our comments and a response to those concerns</p> <p>They offered us a meeting where we could talk about the allegations</p> <p>They informed us about our responsibility under the law and our legal rights</p> <p>They offered us information on how to prevent the problem in the future</p> <p><i>Negative behaviours:</i></p> <p>They threatened they would take us to court</p> <p>They issued a press release about the investigation</p> <p>They told us to do nothing while they were conducting their investigation</p> <p>Business assets were frozen until the case was decided</p> <p>They threatened they would go to the media</p>	<p><i>In each case the ACCC's score for negative behaviours was subtracted from the ACCC's score for positive behaviours to calculate total for ACCC's positive/negative behaviour.</i></p> <p>No. of cases of pos. resp.: 5</p> <p>No. of cases of neg resp.: 5</p> <p>No. of cases of non-resp.: 81</p>

<b>Stage 2: Preliminary Investigation</b>		
What the <b>business did next</b> once it knew it was under investigation:  <i>Yes or no answers.</i> <i>Yes =2; No =1.</i>	<p><i>Positive attitude:</i></p> <p>We did everything we could to cooperate with the ACCC</p> <p>We took remedial action on our own</p> <p>We felt bad about breaking the law and thought about how we could remedy the damage</p> <p><i>Negative attitude:</i></p> <p>We decided to fight the ACCC's allegations</p> <p>We decided to be like a stonewall to the ACCC – neither helping them nor directly fighting them</p>	<p><i>In each case the business' score for negative behaviours was subtracted from the business' score for positive behaviours to calculate a total score for positivity/negativity of behaviour.</i></p> <p><i>No. of cases of pos. attitude: 104</i></p> <p><i>No. of cases of neg. attitude: 18</i></p> <p><i>No. of cases of mixed attitudes: 5</i></p>

<p>(a) Was the ACCC's behaviour at the meeting responsive to what the business did once it knew it was under preliminary investigation? (If there was a meeting)</p> <p><i>Scale of 1 to 5 ('fits very badly' to 'fits very well').</i></p> <p><i>Mean and standard deviation shown</i></p>	<p><i>Positive behaviours:</i></p> <p>The ACCC was good at explaining to us the substance of the allegations The ACCC treated us with dignity and respect. The ACCC was listening to our point of view The ACCC was quite willing to take into account our concerns about how to handle the case The ACCC was good at explaining the social and economic consequences of the alleged breaches we committed The ACCC was interested in minimizing the costs that the case would have to our organisation e.g. damage to our reputation, loss of customers etc.</p> <p><i>Negative behaviours:</i></p> <p>The ACCC just wanted us to provide them with more evidence It was clear that the ACCC was thinking about whether or not the case would make a good story for the media The ACCC was only thinking about taking us to court</p>	<p><i>In each case the ACCC's score for negative behaviours was subtracted from the ACCC's score for positive behaviours to calculate total for ACCC's positive/negative behaviour.</i></p> <p><i>No. of cases of pos. resp.: 35</i> <i>No. of cases of neg resp.: 7</i> <i>No. of cases of non-resp.: 68</i></p>
<p>(b) Was the ACCC's next step responsive to what the business did once it knew it was under preliminary investigation? (If the allegations were continued after preliminary investigation)</p> <p><i>Yes or no answers.</i> <i>Yes =2; No =1.</i></p>	<p><i>Positive behaviours:</i></p> <p>They sent us a letter where they outlined their view of the case They asked for a meeting with us and our lawyers They phoned us and told us their view of the case They asked for a meeting without our lawyers</p> <p><i>Negative behaviours:</i></p> <p>They threatened to take us to court They sent out a press release without showing it to us first They threatened to publicise our case in the media</p>	<p><i>In each case the ACCC's score for negative behaviours was subtracted from the ACCC's score for positive behaviours to calculate total for ACCC's positive/negative behaviour.</i></p> <p><i>No. of cases of pos. resp.: 14</i> <i>No. of cases of neg resp.: 7</i> <i>No. of cases of non-resp.: 58</i></p>

<p>(c) Was the way the ACCC dropped the case responsive to what the business did once it knew it was under preliminary investigation?          (If the case was dropped after the ACCC's preliminary investigation.)</p> <p><i>Yes or no answers.</i></p> <p><i>Ranking of 1 to 3, negative to positive.</i></p>	<p>1 = The case was dropped and the ACCC told us so, but nothing else happened          2 = The case was dropped and the ACCC provided us with information on the Trade Practices Act and how to prevent such problems in the future          3 = The case was dropped and the ACCC issued a press release saying that there was nothing in the case</p>	<p><i>In each case the ACCC's score for negative behaviours was subtracted from the ACCC's score for positive behaviours to calculate total for ACCC's positive/negative behaviour.</i></p> <p><i>No. of cases of pos. resp.: 27</i></p> <p><i>No. of cases of neg resp.: 5</i></p> <p><i>No. of cases of non-resp.: 35</i></p>
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### **Stage 3: The Rest of the Case (including Final Outcome)**

<p>The way the <b>business reacted</b> to the fact the ACCC was continuing its allegations:</p> <p><i>Scale of 1 to 5 ('fits very badly' to 'fits very well').</i></p>	<p><i>Positive attitude:</i></p> <p>We thought it was best to cooperate with the ACCC</p> <p>We were keen on establishing a dialogue with the ACCC</p> <p>Our strategy was to get a quick settlement with the ACCC</p> <p><i>Negative attitude:</i></p> <p>Our strategy was to fight back at the ACCC</p> <p>We didn't care that much about the case</p> <p>Our strategy was not to directly fight back but to be like a stonewall – not helping the ACCC at all</p>	<p><i>In each case the business' score for negative attitudes was subtracted from the business' score for positive attitudes to calculate a total score for positivity/negativity of attitude.</i></p> <p><i>No. of cases of pos. attitude: 71</i></p> <p><i>No. of cases of neg. attitude: 9</i></p> <p><i>No. of cases of mixed attitudes: 4</i></p>
<p>(a) Was the <b>ACCC's attitude throughout the rest of the case</b> responsive to the way the business reacted to the ACCC's continuing</p>	<p><i>Positive attitude:</i></p> <p>The ACCC were very willing to listen to our suggestions regarding how to resolve the case</p>	<p><i>In each case the ACCC's score for negative attitude was subtracted from the ACCC's score for positive attitude to calculate total for ACCC's positive/negative behaviour.</i></p>

allegations?	<p>The ACCC was keen on giving us information about the law and helping us understand its purpose</p> <p>The ACCC was focusing on getting the best outcome for our business while still applying the law</p> <p><i>Negative attitude:</i></p> <p>We had the feeling, that the ACCC would make the case even worse if we didn't accept their solution</p> <p>The ACCC was keener on making an example of our case than looking at the facts and individual circumstances of the case</p> <p>The ACCC treated the case in a standard way instead of looking at its individual characteristics</p> <p>The ACCC were only waiting for the right moment to force us to accept the solution they always wanted</p> <p>The ACCC was very keen to tell us about the harm that the conduct had caused</p>	<p><i>No. of cases of pos. resp.:</i> 10</p> <p><i>No. of cases of neg resp.:</i> 3</p> <p><i>No. of cases of non-resp.:</i> 49</p>
(b) Was <b>the means by which the ACCC finally resolved the case</b> with the business responsive to the way the business reacted to the fact the ACCC was continuing its allegations?  <i>Ranking of 1-6 negative to positive.</i>	<p>1 = Through a criminal prosecution.</p> <p>2 = Through contested civil proceedings in court</p> <p>3 = Through court orders that we consented to (e.g. financial penalties, orders not to engage in the conduct again).</p> <p>4 = Through a formal settlement with that we signed and that was enforceable in court and was made public.</p> <p>5 = Through a settlement agreement with the ACCC that was made public.</p> <p>6 = Through a settlement agreement with the ACCC that was not made public in any way.</p>	<p><i>No. of cases of pos. resp.:</i> 21</p> <p><i>No. of cases of neg resp.:</i> 3</p> <p><i>No. of cases of non-resp.:</i> 75<sup>19</sup></p>

<sup>19</sup> Also includes those whose case was dropped, or where their case was still not resolved at the time of the survey.

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Note: The all in all number of cases varies from each stage and each stage either because of non-respondents (missing values) or because that part of the investigation did not appear in the individual case because the case was drop at a earlier stage.

#### TECHNICAL APPENDIX 4: MEASURES FOR IDENTIFYING RJ RESPONSIVENESS

**Table A4.1: Measures for Identifying RJ Responsiveness in ACCC Behaviour Towards Business in Enforcement Interaction**

For each of the four stages the means have been calculated for both RJ responsive and non-RJ behaviour by the ACCC.<sup>20</sup> Then the means for each of RJ and non-RJ responsiveness across all four phases was calculated to give a total measure of RJ responsiveness and a total measure of non-RJ for each case.

<b>Stage 0: How the ACCC Informed the Business of the Investigation</b> <i>Single check box for each item. Tick = 1.</i>	
<b>Indicators of RJ Responsiveness by the ACCC</b>	
We received a letter from a staff member of the ACCC (q31) and + An ACCC staff member phoned us or The ACCC sent us a letter telling us about the investigation or The ACCC telephoned us and told us about the investigation = 72	
An ACCC staff member phoned us = 23	
The ACCC sent us a letter telling us about the investigation = 14	
The ACCC telephoned us and told us about the investigation = 3	
<b>Indicators of Non-RJ Responsiveness by the ACCC</b>	
We received a letter from a staff member of the ACCC and + We received a notice from the ACCC requiring us to provide documentary evidence or attend interviews with employees or ACCC staff showed up at our premises one day pursuant to a statutory notice to start their investigation and copy documents or Suppliers/customers/competitors told us that they had been interviewed by the ACCC = 13	
We received a notice from the ACCC requiring us to provide documentary evidence or attend interviews with employees = 33	
ACCC staff showed up at our premises one day pursuant to a statutory notice to start their investigation and copy documents = 1	
We found out about the investigation because suppliers/customers/competitors told us that they had been interviewed by the ACCC = 9	
The ACCC sent us a formal letter requesting us to provide documentary evidence or requesting interviews with managers or employees = 10	
The ACCC sent us a formal notice requiring us to provide documentary evidence or requiring interviews with managers or employee = 4	
ACCC staff members just showed up on our premises one day pursuant to a statutory notice to start their investigation and copy documents = 1	
<b>Stage 1: Preliminary Investigation</b> <i>Yes/no questions. Yes = 1; No = 0.</i>	
<b>Indicators of RJ Responsiveness by the ACCC</b>	
They informed us about our responsibility under the law and our legal rights = 59	
They offered us information on how to prevent the problem in the future = 23	
The ACCC wrote a letter detailing the ACCC's concerns and asked for our comments and a response to those concerns = 113	
The ACCC offered us a meeting where we could talk about the allegations = 64	
<b>Indicators of Non-RJ Responsiveness by the ACCC</b>	
The ACCC threatened they would take us to court = 51	
The ACCC threatened they would go to the media = 19	
Our business assets were frozen until the case was decided = 1	
The ACCC issued a press release about the investigation = 42	

<sup>20</sup> In order to do this, each item was first recoded into a 0-1 scale (that is items measured on a 1-5 scale were recoded into 1 = 0; 2 = 0.25; 3 = 0.5; 4 = 0.75; 5 = 1.

They told us to do nothing, while they were conducting their investigation = 21
<b>Stage 2: Meeting between ACCC and Business (if meeting was held)</b> <i>Scale of 1-5 ('fits very badly' to 'fits very well'). Recoded into a 0-1 scale.<sup>21</sup></i>
<b>Indicators of RJ Responsiveness by the ACCC</b>
The ACCC was good at explaining to us the substance of the allegations.....3.18 (1.10) The ACCC treated us with dignity and respect:.....3.06 (1.12) The ACCC was listening to our point of view.....2.94 (1.12) The ACCC was quite willing to take into account our concerns about how to handle the case..... 2.67 (1.07) The ACCC was good at explaining the social and economic consequences of the alleged breaches we committed..... 2.56 (1.11) The ACCC was interested in minimizing the costs that the case would have to our organisation e.g. damage to our reputation, loss of customers etc.....1.98 (1.17)
<b>Indicators of Non-RJ Responsiveness by the ACCC</b>
The ACCC just wanted us to provide them with more evidence.....3.27 (1.17) It was clear that the ACCC was thinking about whether or not the case would make a good story for the media..... 2.97 (1.40) The ACCC was only thinking about taking us to court.... 2.58 (1.44)
<b>Stage 3: The Rest of the Investigation &amp; Enforcement Process (If case was continued by ACCC)</b> <i>*Asterisked questions are yes/no questions. Yes =1; No = 0.</i> <i>Other questions: scale of 1-5 ('fits very badly' to 'fits very well'). Recoded into a 0-1 scale.</i>
<b>Indicators of RJ Responsiveness by the ACCC</b>
The ACCC sent us a letter where they outlined their view of the case* = 51 The ACCC phoned us and told us their view of the case* = 10 The ACCC asked for a meeting with us and our lawyers* = 22 The ACCC asked for meeting without our lawyers* = 3 The ACCC were very willing to listen to our suggestions regarding how to resolve the case.....2.48 (1.08) The ACCC was keen on giving us information about the law and helping us understand its purpose..... 2.48 (1.04) The ACCC was focusing on getting the best outcome for our business while still applying the law..... 1.99 (1.02)
<b>Indicators of Non-RJ Responsiveness by the ACCC</b>
The ACCC threatened to take us to court* = 30 The ACCC threatened to publicise our case in the media* =11 The ACCC sent out a press release without showing it to us first* = 17 We had the feeling, that the ACCC would make the case even worse if we didn't accept their solution..... 3.34 (1.14) The ACCC was keener on making an example of our case than looking at the facts and individual circumstances of the case....3.31 (1.24) The ACCC treated the case in a standard way instead of looking at its individual characteristics..... 3.09 (1.01) The ACCC were only waiting for the right moment to force us to accept the solution they always wanted..... 3.06 (1.24) The ACCC was very keen to tell us about the harm that the conduct had caused..... 2.91 (1.21)

<sup>21</sup> 1 = 0; 2 = 0.25; 3 = 0.5; 4 = 0.75; 5 = 1.

Table A4.2: Items Included in Measure of Business' Perception of Toughness of Law and Invincibility of Regulator

<b>Questions</b> (Scale from 1-5 'Strongly disagree' to 'Strongly agree'.)	<b>Mean Responses for Each Question</b> (Standard deviations)	<b>Whole Measure</b>
If we breach the Trade Practices Act the chances of the ACCC catching us are big...	3.78 (0.74)	n=114 Mean: 3.66 Cronbach Alpha: 0.76 Min. = 2.82 Max. = 4.36 Std.dev. = 0.36
If we were caught by the ACCC in breach of the Trade Practices Act the prospects of ACCC enforcement against the organization are big...	4.17 (0.61)	
The ACCC has a wide range of effective sanctions against non-complying organizations...	3.73 (0.94)	
It is easy for the ACCC to find out when organizations breach the law...	3.50 (0.86)	
In the light of the size and complexity of their task the ACCC has many resources....	3.15 (1.08)	
It would be politically easy for any government agency to ride roughshod over my organization....	4.16 (0.79)	
The ACCC is generally keeping a close eye on our industry...	3.94 (0.89)	
A breach of the Trade Practices Act does not have to be severe before the ACCC bothers to do anything about it....	3.81 (0.82)	
The ACCC fights back if an organization is non-cooperative....	4.05 (0.70)	
The ACCC is one of the most effective regulators in Australia	3.68 (0.76)	
The level of sanctions imposed for trade practices breaches is generally very low...	2.28 (0.91)	

### TECHNICAL APPENDIX 5: RESULTS OF TESTS OF TFT RESPONSIVENESS

Table A5.1: Differences Between Responsive and Non-Responsiveness at Measuring Stage 1: Beginning of Preliminary Investigation

	Beginning of Preliminary Investigation		
	TFT Resp	TFT Non-resp	Sig. diff.
<b>Perception of fairness of ACCC</b>	2.59 (N=9)	2.50 (N=31)	
<b>Positive learning</b>	3.53 (N=9)	3.43 (N=31)	
<b>Feeling of being stigmatized</b>	<b>3.28 (N=9)</b>	<b>2.41 (N=30)</b>	*
<b>Negative learning</b>	2.19 (N=9)	2.34 (N=30)	
<b>Procedural &amp; substantial justice of ACCC</b>	3.09 (N=10)	2.90 (N=81)	
<b>Flexibility of ACCC</b>	2.35 (N=10)	2.53 (N=80)	
<b>Compliance management in practice</b>	4.21 (N=10)	3.94 (N=81)	

Statistics: T-test. Two-tailed sig. \*\*\* = p< .005 \*\* = p< .01 \* = p< .05 (two-tailed)

Table A5.2: Differences Between TFT Responsiveness and Non-Responsiveness at Stage 2: Preliminary Investigation

	If there was a meeting			Next step if the case was continued			If case was dropped		
	TFT Resp.	TFT Non-resp.	Sig. diff.	TFT Resp.	TFT Non- resp	Sig. diff.	TFT Resp.	TFT Non-resp.	Sig. diff.
<b>Perception of fairness of ACCC</b>	<b>3.08 (N=29)</b>	<b>2.29 (N=22)</b>	***	2.83 (N=27)	2.36 (N=27)		<b>3.26 (N=18)</b>	<b>2.41 (N=32)</b>	***
<b>Positive learning</b>	3.59 (N=29)	3.24(N=22)		3.09 (N=27)	3.51 (N=27)		3.43 (N=18)	3.44 (N=32)	
<b>Feeling of being stigmatized</b>	2.18 (N=28)	2.61 (N=22)		<b>2.04 (N=26)</b>	<b>2.57(N=27)</b>	*	<b>1.41 (N=17)</b>	<b>2.68 (N=32)</b>	***
<b>Negative learning</b>	1.98 (N=28)	2.39 (N=22)		2.17 (N=26)	2.37 (N=27)		2.28 (N=17)	2.30(N=32)	
<b>Procedural &amp; substantial justice of ACCC</b>	2.94 (N=42)	2.96 (N=68)		2.86 (N=27)	2.91 (N=78)		3.00 (N=43)	2.91 (N=76)	
<b>Flexibility of ACCC</b>	2.51 (N=42)	2.54 (N=67)		2.54 (N=27)	2.51 (N=77)		2.44 (N=43)	2.57 (N=75)	
<b>Compliance management in practice</b>	<b>4.12 (N=42)</b>	<b>3.86 (N=68)</b>	*	4.03 (N=27)	3.92 (N=78)		3.94 (N=43)	3.94 (N=76)	

Statistics: T-test. Two-tailed sig. \*\*\* = p< .005 \*\* = p< .01 \* = p< .05 (two-tailed)

Table A5.3: Differences Between Responsive and Non-Responsiveness at Stage 3: Rest of Case

	Atmosphere of the Rest of the Case			Final Outcome		
	TFT Resp.	TFT Non- resp.	Sig. diff.	TFT Resp.	TFT Non- resp	Sig. diff.
<b>Perception of</b>	<b>3.35 (N=24)</b>	<b>2.36 (N=30)</b>	***	2.53 (N=24)	2.67 (N=24)	

<b>fairness of ACCC</b>						
<b>Positive learning</b>	3.50 (N=24)	3.37 (N=30)		3.48 (N=24)	3.31 (N=24)	
<b>Feeling of being stigmatized</b>	<b>1.91 (N=23)</b>	<b>2.53 (N=30)</b>	*	<b>3.05 (N=24)</b>	<b>2.11 (N=23)</b>	***
<b>Negative learning</b>	2.12 (N=23)	2.27 (N=30)		2.24 (N=24)	2.38 (N=23)	
<b>Procedural &amp; substantial justice of ACCC</b>	2.92 (N=24)	2.95 (N=81)		2.64 (N=24)	2.97 (N=75)	*
<b>Flexibility of ACCC</b>	2.42 (N=24)	2.55 (N=80)		2.29 (N=24)	2.57 (N=74)	*
<b>Compliance management in practice</b>	4.11 (N=24)	3.96 (N=81)		4.25 (N=24)	3.90 (N=75)	*

Statistics: T-test. Two-tailed sig. \*\*\* = p<.005 \*\* = p<.01 \* = p<.05 (two-tailed)