

**TITLE: There is no “opt out” clause**

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Imagine if a young driver announced that he was "opting out" of the road rules or some school kids declared that they were free to download whatever movies and music they wanted as they had "opted out" of the copyright laws.

What about shonky builders? Imagine if they could just remove themselves from the regulatory and safety limits we try to impose on them.

Conservative politicians usually work hard to ensure they are seen as "tough on law and order". Respect for the law is obviously essential in a democracy and there is usually no shortage of politicians lining up to call for more police and tougher sentences to discourage or punish those who transgress.

But this enthusiasm for enforcement is remarkably absent when it comes to business owners and managers who break the law. When white-collar criminals endanger the public it seems we need to be flexible and understanding.

Consider the response to the recent investigation by Fairfax Media journalists that revealed widespread underpayment of staff in Sydney restaurants.

In response to these apparent breaches of the industrial laws, the head of Restaurant and Catering John Hart explained that the "complex" regulatory system was to blame for businesses "opting out" of it.

While there is no doubt that some elements of industrial law are complex, it's hard to believe anyone can run a business in Australia without knowing that there are minimum wages that they must pay. It's even harder to believe a business owner honestly believed that if a law was too complex to understand he could simply "opt out if it".

Here in Canberra we recently discovered that there are widespread breaches of safety regulations in the dry-cleaning industry. This discovery, however, was only made by accident.

After a near fatal carbon-monoxide leak from a dry cleaner in Woden Plaza the safety regulator launched an industry-wide crackdown.

In the words of Work Safety Commissioner Mark McCabe: "I'm appalled at what we're finding. To be frank, I think it's because they haven't been closely regulated for some time."

So, if it's that bad, where are the calls for more corporate cops to be out on the beat?

Where are the phoney experts explaining that the only way to get business owners to respect the law is to have a "visible presence" and to "make an example" of those who break the law to create a "deterrent" for the rest of the community?

The criminological evidence supporting the "tough on crime" approach so favoured by many politicians doesn't work. Alcohol-fuelled crimes of passion, property crimes committed to fund addiction and acts of vandalism by bored young people are obviously destructive and deplorable, but they are not made by people in a rational state of mind.

While they need to be punished, the belief that such punishment will be a "deterrent" to others is the triumph of hope over experience.

Ironically, the kind of crimes that are more effectively deterred through tough enforcement and heavy sanctions are the kind of white-collar crimes and regulatory breaches that put personal profit ahead of other people's safety.

The main incentive for builders to cut corners, dry cleaners not to maintain their equipment properly or for restaurants to ignore food-handling rules is to cut costs. These are not crimes of passion, they are carefully considered business strategies based in part on an assessment of the probability of getting caught and the size of the sanction if they are.

If increased investment in enforcement and stronger penalties are likely to work anywhere, it is in the field of corporate misconduct.

As a society we spend a fortune paying police to drive around trying to catch the minority of people who drive dangerously. All citizens who drive accept that they may be randomly stopped and asked to provide a breath test in order to discourage and detect drink-driving.

Most of us do not believe that we are being subject to undue surveillance or treated like criminals; we accept that the costs and inconvenience of such enforcement make the roads safer.

The vast majority of small business owners do the right thing by their staff and by their customers.

Indeed, a survey by the Australia Institute last year found that employees in small business were happier with their workplaces than any other employees. But the fact that most businesses do the right thing does not mean that governments should not invest in detection and enforcement.

The purpose of laws that determine minimum wages, safety standards and environmental protections is to constrain our choices and behaviour.

Of course there are businesses that believe they should be able to pay lower wages and ignore safety regulations. They aren't different from drivers who believe they should be able to drive faster than the speed limit or ignore the need to have their car inspected for registration.

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