



Minimum force, maximum impact

VCNZ's **Wayne Ricketts** stresses the value of evidence-based and intelligently targeted regulation.

PALE, MALE AND stale were buzzwords used at a workshop and conference on regulation that some VCNZ staff attended in Melbourne in late November. As a possible candidate for pale, male and stale, I found the conference enlightening, useful and thought-provoking – and certainly not pale, male or stale.

The conference was hosted by the Council on Licensure, Enforcement and Regulation (CLEAR), an international association committed to improving the quality and understanding of regulation in order to enhance public protection, and the Australian Health Practitioner Regulation Agency (AHPRA), which regulates 14 different health professions. (Note: VCNZ Chief Executive Sean McKinley is a CLEAR board member.)

The attendees (from eight countries) were predominantly from human health, and included doctors, nurses, midwives and occupational therapists, with a smattering of veterinary regulators from Australia and Canada. The issues facing human health and veterinary regulators are similar, and there are common challenges across countries. And, of course, all health regulators share a common responsibility for protecting the public (not the profession) and ensuring that practitioners are fit to practise.

There was a strong emphasis on evidence-based regulation, drawing on the ideas of Harvard University's Professor Malcolm Sparrow. Sparrow's proposition is that regulation should be about prevention, partnerships, problem solving, compliance assistance, customer service, and having a 'soft' touch. VCNZ has adopted a similar UK model known as 'right-touch regulation', which involves

using the minimum regulatory force to achieve the desired result. Both paradigms advocate moving away from an adversarial, reactive, purely enforcement-type approach to regulation.

We heard how AHPRA and the Health and Care Professions Council in the UK have formed a collaborative research relationship to drive regulatory improvements and lead the way internationally. This is the largest research collaboration of its kind, with data on more than one million registered health practitioners across both countries, and provides a foundation for a stronger focus on how regulators can improve regulatory effectiveness, patient safety and professional standards internationally.

I liked the story from Marie Bismarck's presentation in which three people find a group of children drowning in a stream. Two jump in to help, but the third walks off. When the others ask where he is going, he replies, "I'm walking upstream to find out why they are falling in".

This reflects the theme of current research aimed at identifying predictors of complaints and why some practitioners are more 'complaint-prone' than others. We need intelligent regulation that targets practitioners at risk, not those who are doing their jobs well (the vast majority).

It is proposed that identifying possible traits might lead to a more preventive approach by recognising practitioners in need of support, averting 'careers of misconduct', making better use of scarce resources and protecting the public from harm – in other words, a more risk-based approach to regulation.

The research looked at health professionals and lawyers. Indicators identified included being male, 65-plus,

with a history of previous complaints, working in isolation, country of qualification, low empathy, high antagonism, physical and health issues and the absence of a capable guardian. These can be fed into a PRONE (Predicted Risk of New Event) algorithm to calculate the risk of a future complaint.

There was talk about Sparrow's 'chronology of harm'. This involves a complex interaction of rising societal expectations set against factors such as a lack of peer support, dysfunctional teams, poor self-reflection, pressurised work environments, challenging practice, and cultures of fear and conflict. It culminates in the practitioner causing harm to the patient or making a mistake, resulting in a complaint to the regulator.

Another focus was that the regulator is just one part of a system, emphasising the collective role of educators, employers and adequate representation of a profession. We should be working more collaboratively to develop 'soft' regulation, one speaker said. He went on to say that the current model is not working. The investigation into the Australian Bacchus Marsh and Melton Regional Hospital baby deaths in 2016 recommended more sharing of information between organisations to identify reasons for complaints and the types of professional who are more likely to be complained about.

An eminent retired high court judge closed the conference by stressing the need for proportionality when applying the law and regulations. Regulators need to take a holistic approach when viewing a 'wrongdoing', and apply penalties appropriately – by no means a pale, male and stale approach. ⁽⁹⁾