Balancing purpose and process

Taking Care podcast transcript

Ahpra acknowledges the Traditional Owners of Country throughout Australia and the continuing connection to lands, waters and communities. We pay our respects to Aboriginal and Torres Strait Islander cultures and Elders past, present and emerging.

Susan Biggar: Welcome to *Taking Care*, a podcast of Ahpra and the National Boards. I am Susan Biggar. Today we are focusing on the fundamental questions about how health professions are and should be regulated to protect the public to ensure safe and high-quality care. We spoke to Professor Kieran Walshe in late February 2020 before the COVID-19 pandemic descended on us. However his insights resonate now as safe and high-quality healthcare is as important as ever. We hope you enjoy this episode.

Today I am here with Profession Kieran Walshe. Welcome Kieran.

Professor Kieran Walshe: Thank you.

Susan Biggar: Maybe you could start with telling us a little bit about your background as a researcher.

Professor Kieran Walshe: Sure. I work at the University of Manchester in the UK and I have been a researcher in health policy and health management for most of my career. And I have worked elsewhere in the UK and in the US. And I have also been involved in regulation and regulatory reform in the UK with government and some of our regulatory agencies and worked as a leading research funder as well. So, I have tended to have an academic career but spent quite a bit of my time outside of the university.

Susan Biggar: I would love it if we could start at the beginning. We're thinking about health practitioner regulation: what is it all about? What is the point of this?

Professor Kieran Walshe: I think there is an intellectual answer to that, which is that the purpose of this is to make sure that we deliver safe, high quality care and to make sure that practitioners are fit to practice in their chosen professions. I think for most of us, there is a more emotional response to it as well, which is if we are a patient or if a member of our family is a patient and we go and see a doctor or a nurse or a physiotherapist we want to know that we are going to get high quality care and that we will be safe and that we will be cared for properly and compassionately. And, that the person who is doing it is fit to do that and that they have the right training. But they also have the right human motivations and values and qualities.

Susan Biggar: I suppose on the other end, then, maybe what are some of the problems do you think that health practitioner regulation is trying to fix?

Professor Kieran Walshe: Regulators of the health professions get given all sorts of things to tackle. Some of them that they are asked to do; some of them simply surface; some of them are just emerging out of kind of the wider societal context. So, the core focus is about safe, high quality care but then out of societies' wider functioning comes all kinds of other issues for them to deal with. It can be to deal with workforce supply, scarcity of healthcare professionals. It can be to do with problems which emerge in wider society. If you think about the exposure of problems around child sexual abuse and around child pornography. That is an area where regulators have had to respond to something that has happened in society that ten years, fifteen years, twenty years ago; I don't think any of the regulators would have seen on their agenda. So, I think the challenge for regulators is to try and keep

focused on their overall mission and purpose whilst dealing with the processes that they have to run to be a regulator: to register people, to make sure that education is fit for purpose and to deal with concerns, problems or complaints about individual practitioners which can become all consuming. There is an expression that "the process becomes the purpose" and if you are not careful as a regulator all your effort ends up invested in running the register, running your complaints system, dealing with discipline, dealing with fitness to practice and it is hard. You need to keep stepping back and asking that bigger question about how all of this is serving your mission.

Susan Biggar: A great segue into something else I wanted to ask you about, which is the fact that regulators actually have some choices. You have written a bit about that, and they could choose about whether they, for example, you talk about the choice between being statute driven or mission led. Can you talk a bit about some of those choices and what they look like?

Professor Kieran Walshe: Regulation all has its origin, or is grounded in, legislation. So, every regulator has some kind of piece of founding legislation which sets out why we have a regulator, what the regulator is there to do and quite often in a lot of detail says what their powers and their duties are and how they might behave. And one approach to being a regulator is to take that as your Bible and to have a literalist interpretation which says, 'Well, if it's not in the Act then it's not something that we are here to do'. And that has advantages to it. You can't often be challenged about what you do because you could simply point to the legislation, but it may mean that you are not tackling the real issues and problems to do with safe and high quality patient care. You may not be tackling problems which were not really talked about or anticipated when your legislation was framed. The alternative approach is to think really hard about what your mission is and then to treat your legislation as a toolbox, if you like; a set of approaches that you can use and a set of powers and duties that you can deploy. But to recognise that some of what you do, perhaps even quite a lot of what you do will be in a sense extra-legislative. It won't be directly mandated by your Act but it would be recognised as common sense and important and necessary and will be accepted by registrants importantly as something that the regulators should be concerned about. The downside risk of that is that people think that there is a kind of regulatory creep, that you are gradually extending the range of things the regulator is concerned with. But the upside is perhaps that you can be more focused on the real issues and problems and less driven by what it says in an Act that may have been drafted maybe fifteen or twenty years ago.

Susan Biggar: In terms of one staying relevant, I suppose, but also keeping a finger on the pulse of what actually is that definition of what is patient safety and what does patient safety look like maybe to the public as well, would you say?

Professor Kieran Walshe: Yes, I think so, and I think that the public expect regulators to look after the set of things they have been asked to care about on behalf of society because that is what happens with regulators. We hand to the regulator a set of powers and a responsibility to look after whatever it is, whether it's the fitness to practice of healthcare professionals or the clean air and clean water in our environment or if it's the way in which banks behave and the way they treat their customers. The regulator gets this specialised task to deal with because it's a lot to expect of individual consumers to exercise agency and pursue their rights on their own behalf and that is what regulators are there to do. If what they have is a literalist view of their purpose which says in their legislation that 'we look at these three issues' and that's, therefore, what we look at, then it is a rather kind of poverty-stricken, slightly self-defeating view of their regulatory remit.

Susan Biggar: From what you are saying, regulators have a lot of choice within that legislation. There is still choice about, for instance, whether they, being a regulator that, say, reacts to some sort of failure and looks at that bottom piece only. As opposed to one that pushes health professionals, for example, to improve.

Professor Kieran Walshe: Yes, and that is, I think, an important false dichotomy. This idea as a regulator, should you be concerned with just the poorly performing practitioners or organisations? The safety net, if you like, below which you don't want anybody to fall. And you spend all your time on 5%

of the health professionals whose performance gives serious cause for concern. Or should you be worried about the larger group of professionals, 100% of professionals, the whole spectrum of performance and trying to help all of them in various ways to improve? And it seems to me a false dichotomy, because you should obviously be concerned with doing both. You can't neglect the 5%. They are really important and they are probably the people who, if we can't look after them and help them and deal with them effectively, they may do harm to patients. But we should also be concerned about the broader profession, the mainstream of profession and how we can help those people to improve. Because if all we worry about is the 5% we are neglecting to think about and to try and improve.

Susan Biggar: Are there clearly some ways that are better than others in terms of that balance and how you protect the public?

Professor Kieran Walshe: I think the question you have to keep asking yourself as a regulator is whether what you are doing is contributing to that end goal of ensuring safe and high quality care. And so you have a set of tools you can use. You can use complaints and investigations. You can undertake inspections. You can use mechanisms that require authorisation to undertake particular activities. You can engage in programs of works which are not directly regulatory supporting, for example, education; the bringing together of peers and processes of peer review. You can do all of those things. You can produce guidelines and publications and in each of those cases you need to be thinking about how this helps you to do that kind of end mission. What often happens as a regulator, it happens to all of us really doesn't it? Is that the urgent drives out the important. So the thing that often dominates how the professions regulate is fitness to practice because once you get a notification or a concern or a complaint, the process starts which is hard to modify or stop. And where you know you will be held to account for timescales in which it has been done and the rigour with which it has been undertaken. And so if you are not careful you end up with a modelling which the fitness to practice is the tail wagging the regulatory dog. And everything we do is about fitness to practice because practice really, really matters but it is only one part of the responsibilities of a good regulator.

Susan Biggar: But we shouldn't be completely focused on notifications. It shouldn't be completely about one piece, that complaints side…

Professor Kieran Walshe: Yes, and one of the things that regulators often end up doing is having a one-size-fits-all approach to issues or problems. So saying 'Okay, if we have a notification this is our process, and this is the process that we follow'. The risk there is one-size-fits-all approaches are almost inherently ineffective, or inefficient certainly, because notifications about concerns can concern something very straightforward and simple and relatively trivial or they can concern something enormously important and really serious. They are highly heterogeneous, so it makes a lot of sense for those but for all sorts of other regulatory problems to have an approach that is quite diversified and that is also quite responsive in the sense that what you do depends partly on how the health professions you regulate and professionals that you regulate respond. So, if people show insights and if they show concern and if they demonstrate remediation, you treat them differently don't you from somebody who doesn't show any insight, who doesn't show any apparent concern and who appears resistant to any remediation? So, trying to find ways of being a responsive regulator who deals differently to these things is important. Often you get pushed back into (doing as) having a single process is more simple, it's more defensible quite often. You can't be argued to be treating different people differently because you treat everybody the same. It's fair but it is certainly not proportionate. It's not a great use of resource. So, taking your example of notifications, one of the challenges for all health professions regulators is an ever-upward trend in the number of concerns or complaints or notifications. So finding effective and efficient ways of dealing with those and dealing with them appropriately, intelligently, sympathetically and humanly but also using rigour where it is really needed is important.

Susan Biggar: Again, taking the regulator's mind back to the focus being on public safety not on clearing out all of the notifications that we are getting in.

Professor Kieran Walshe: If we are not careful our metric becomes how many notifications did we deal with and how many did we close this month, this quarter or this year, rather than how well did we do it.

Susan Biggar: And probably practitioners and the public will judge us on the latter.

Professor Kieran Walshe: The practitioners and the public, for those who don't engage directly with the regulator because they haven't been either the subject of a concern or a complaint or been a person who has raised a concern or a complaint, their understanding of this is quite distant and is very much shaped by what they hear from other people or what they see in the media. But for people that are part of the process, we know that for health professionals and for patients their perceptions of the process are fundamentally shaped by how well it worked, by timeliness, by the behaviour of the individuals involved, by their sense in which it has been just and appropriate and fair and by their acceptance or non-acceptance of the outcome.

Susan Biggar: You have talked, spoken and written about what we know about the social and the interpersonal dynamics of regulation and I think that is really interesting. Can you tell us a bit about that?

Professor Kieran Walshe: There is lots of literature to say that regulation is a social process and so the way people perceive regulatory interactions like an investigation or an inspection by a regulator, is shaped by the people that do it. And if you are a patient or if you are a healthcare professional you think about the regulator very much in terms of the people who you have met who deliver that intervention; so, they in a sense personify the regulator. So, if they behave in ways that are directive, if they assert their authority, if they are rude, if they are dismissive then that is what you think about the regulator. Equally, if they are human, if they give you dignity, if they listen to what you say and if they treat what you say seriously then you perceive them differently. So, the people who do it are hugely important and is it probably fair to say that most regulators don't invest enough time and effort in training and developing the regulatory staff who do regulation and thinking about the ways in which they build and sustain positive regulatory relationships. Positive regulatory relationships are not about just being cosy and friendly and nice to everybody and things like that. Because regulators sometimes have to uncover and deal with really unwelcome truths, but they can still do that in a way that treats people with compassion and dignity, whether they are patients or healthcare professionals.

Susan Biggar: In a way I suppose it is like healthcare. A lot of healthcare does boil down to that human element, a good connection, a good communication, was I listened to, some of those things that are important in healthcare are also, it sounds like, are really fundamentally important in regulation.

Professor Kieran Walshe: I think so. And I think it is a really hard job to do well and it can be easier to be more transactional rather than talking to somebody face-to-face. It can be easier to write them an email or write them a letter., So, helping regulatory staff to be empowered to behave in the ways in which you want them to behave, and supporting them in doing that, training them to do that, and recruiting them to do that all seem to matter.

Susan Biggar: Well, Kieran, thank you so much for your insights. They are really important and part of an ongoing conversation for us. And thanks for taking the time to be with us today.

Professor Kieran Walshe: Thank you.