What is recertification?

Former New Zealand Health and Disability Commissioner, Ron Paterson, has stated that the Act is very clear about its requirements of RAs:

> … Under s15(1)(c) of [the Act] an [RA] may not register a health practitioner unless satisfied that he or she is competent to practise within their specified scope of practice, nor [under s29(1)] issue an annual practising certificate unless it is satisfied that the applicant meets the required standard of competence.

For us, these statutory provisions are at the heart of our work as a regulator.

Recertification is the annual process of ensuring each practitioner meets our required standard of competence as a prerequisite to the granting of an annual practising certificate (APC). It is a process comprised of two separate, but interrelated steps.

The first step is a statutory annual assessment of a practitioner's standard of competence at APC renewal time. The second step, where required by us, is the satisfactory completion of a recertification programme, to ensure our practitioners are competent to practise.

The successful recertification of a practitioner is our declaration to the world at large, that our practitioners are competent and fit to practise.

A review of other RA recertification practices confirms there are differences in the way RAs (both in New Zealand and overseas) undertake recertification. Some of these differences can be attributed to practitioners and professions, as well as an RA's responsibilities, as set out in their own legislation.

Internationally, most RAs share similar ideas about the definition and purpose of recertification. However, other RAs have also adopted elements, components, or ideas in their definitions that are different from our own. These include:

- a regular recertification audit providing the public with further assurance that practitioners are maintaining their competence
- practitioners completing the required hours of CPD and producing certificates to prove this upon request
- a practitioner following a continuing education or professional development programme
- practitioners identifying their learning needs and undertaking activities that are relevant to their scope/s of practice.

Our approach to recertification assumes trust on two levels. First, in the robustness of the framework and what we require our practitioners to do to assure us of their competence to practice. Second, in our practitioners' behaviours and actions regarding their compliance. Both are required in an effective recertification framework.

Historically, whenever we have undertaken a practice audit, compliance issues have always been identified. The seriousness of the breach (including the actual and potential impacts) varied from practitioner to practitioner. However, it highlights the delicate balance that must be

struck between our assumptions about assurance and compliance, the nature of the risk and its consequences and our regulatory response to all of these factors.

In reviewing our recertification framework, the test for us is to develop and deliver a system which is effective (i.e. it assures the public's health and safety), consistent and fair in its requirements and treatment of our practitioners, and is robust and evidence-based. Moreover, we must be confident that having recertified a practitioner—that practitioner meets our required standard of competence to practice.

This discussion document is the beginning of our review process and when it has finished we hope to have a recertification framework that addresses all of these factors.

Other tools that help us to recertify our practitioners

In addition to our statutory responsibilities (and the policies and procedures that support these), our recertification framework comprises other tools and mechanisms that help us to determine whether our practitioners are competent to practise. These include:

- our *Standards Framework*[1] and *2015-2020 Strategic Plan*[2]
- analysing data and information that helps us to recognise and manage risk/s for our practitioners.

Our Standards Framework

In 2014, we completed the development and consultation on our *Standards Framework*. Comprised of ethical principles and professional and practice standards, this framework collectively defines the ethical conduct and clinical and cultural competence we expect of all our practitioners.

All of the standards contained in the *Standards Framework* are mandatory and we require our practitioners to declare they comply with them in order for them to successfully recertify on an annual basis.

It should be noted that our *Standards Framework* contains an ethical principle (focused on ensuring safe practice) that is directly relevant to our recertification framework.

Of the five professional standards associated with this safe practice principle, three of them require our practitioners to:

- practice within their professional knowledge, skills and competence, or defer to another health practitioner
- identify and manage health and safety risks within their practice environments
- keep their knowledge and skills up-to-date through ongoing learning and professional interactions.

1 See http://www.dcnz.org.nz/i-practise-in-new-zealand/standards-framework
2 See http://www.dcnz.org.nz/resources-and-publications/publications/strategic-plan/

Our 2015-2020 Strategic Plan

Our *2015-2020 Strategic Plan* signalled a paradigm shift in our understanding and approach to regulation. In effect, our current one-size-fits-all approach to recertification applies the same assessment criteria to all of our professions, without accounting for differences in their technical skills and practices and ongoing learning and education needs. However, our decision to become a right-touch risk-based regulator, means that since 2015, we have aimed to use the minimum regulatory force required to achieve the best outcomes for the public and our practitioners.

This decision has a direct impact on our current approach to recertification. For example, even though there are differences in the completion of CPD hours and peer contact requirements for each profession, our recertification programme is effectively the same for all our practitioners. We are aware this is problematic for some of our professions and is another reason why we have undertaken this review.

Since our establishment in 2003, our work has enabled us to accumulate data and information telling us the vast majority of our practitioners:

- consistently comply with our requirements
- meet (and in many cases exceed) our minimum standards
- engage in activities and professional learning opportunities.

When we pair our data with our decision to be a right-touch risk-based regulator, it is clear we must find new ways to ensure our regulatory assessments (including the frequency with which these are undertaken) and decisions (which can range in severity and seriousness from an informal warning through to placing limits on a practitioner's scope/s of practice) are proportionate to the risk posed.

It means shifting from a one-size-fits-all assessment approach to a risk-based management approach. In addition, it means dealing with honest mistakes and challenges facing our practitioners in a fair, supportive and sympathetic manner.

Over time, new evidence about regulatory approaches has emerged. This information challenges us to evaluate our own effectiveness and the way we carry out our responsibilities. As a regulator, it meant thinking about how we conduct our business and examining whether we have the appropriate systems that enable us to work smarter and be beneficial for our practitioners and ourselves.

We have had discussions with other RAs (in New Zealand and overseas) and were informed by evidence and information from some of the key architects of the right-touch risk-based approach to regulation. This includes one of the foremost experts on regulation, Professor Malcolm Sparrow.[3] All of this information influenced our decision to adopt a right-touch risk-based approach to our regulatory work.

If we successfully incorporate this approach to regulation within our recertification framework, then we will be acting consistently with the eight elements identified by the Professional Standards Authority in the United Kingdom. These are that an RA is:[4]

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[3] See Sparrow M. 2000. *The regulatory craft: controlling risks, solving problems & managing compliance*. Washington DC: Brookings Press; Sparrow M. 2008. *Operational challenges in control*. New York: Cambridge University Press.

[4] Professional Standards Authority. 2015. *Right-touch regulation*. Revised. London: Professional Standards Authority. Retrieved from www.professionalstandards.org.uk (23 August 2016).

• identifying the problem before the solution	• quantifying and qualifying the risk
• getting as close to the problem as possible	• focusing on the outcome
• using regulation only when necessary	• keeping it simple
• checking for unintended consequences	• reviewing and responding to change

Recognising and managing risk

From the outset, we want to say that even where data is being used to identify and manage risk, not every risk can be detected in time to protect the public's health and safety. We also acknowledge there is no scientific formula that accurately predicts how an individual practitioner will respond to risk.

However, the research[5] tells us that a practitioner, who (frequently) presents with risk factors, is at higher risk of not complying with a regulator's requirements.

There is a large body of research on risk factors affecting a practitioner's competence to practise. These groups of risk factors are: [6]

- conduct risk factors relating to a practitioner's behaviours and attitudes
- competency risk factors relating to a practitioner's skills and knowledge, that may affect the risk of departure from standards
- contextual risk factors relating to the environment or structures within which an individual practices.

Our own analysis (undertaken in 2015) of competence, conduct and health referrals to us since the inception of the Act confirms our practitioners have and are experiencing these same risk factors. Moreover, our analysis revealed that male practitioners, those who submitted late APC applications, dentists trained in a particular jurisdiction, newly registered overseas-trained dentists from all jurisdictions and dentists operating in solo practices have a higher risk profile than their peers and colleagues. The practical effect being they are more likely than their peers and colleagues to be referred to us for competence, conduct and health issues.

If we are to be a right-touch risk-based regulator then we need to use the appropriate tools to recognise and manage risks to our practitioners. While the use of risk profiling tools to identify competence to practise issues is not new, it is a topic that garners widespread opinions and vigorous debate about the merit of risk profiling tools and interpretation of information gained from them.

Figure 1 (below) sets out a risk-based framework that pairs risk factors for practitioners (as a group) with the compliance risk posed by an individual practitioner. This risk framework assumes the regulator will use graduated responses to either encourage and/or manage compliance by their practitioners.

Figure 1 and figure 2 assume the majority of practitioners will spend their entire practicing careers at level 1, but that some of our practitioners may hover between level 1 and 2 (or

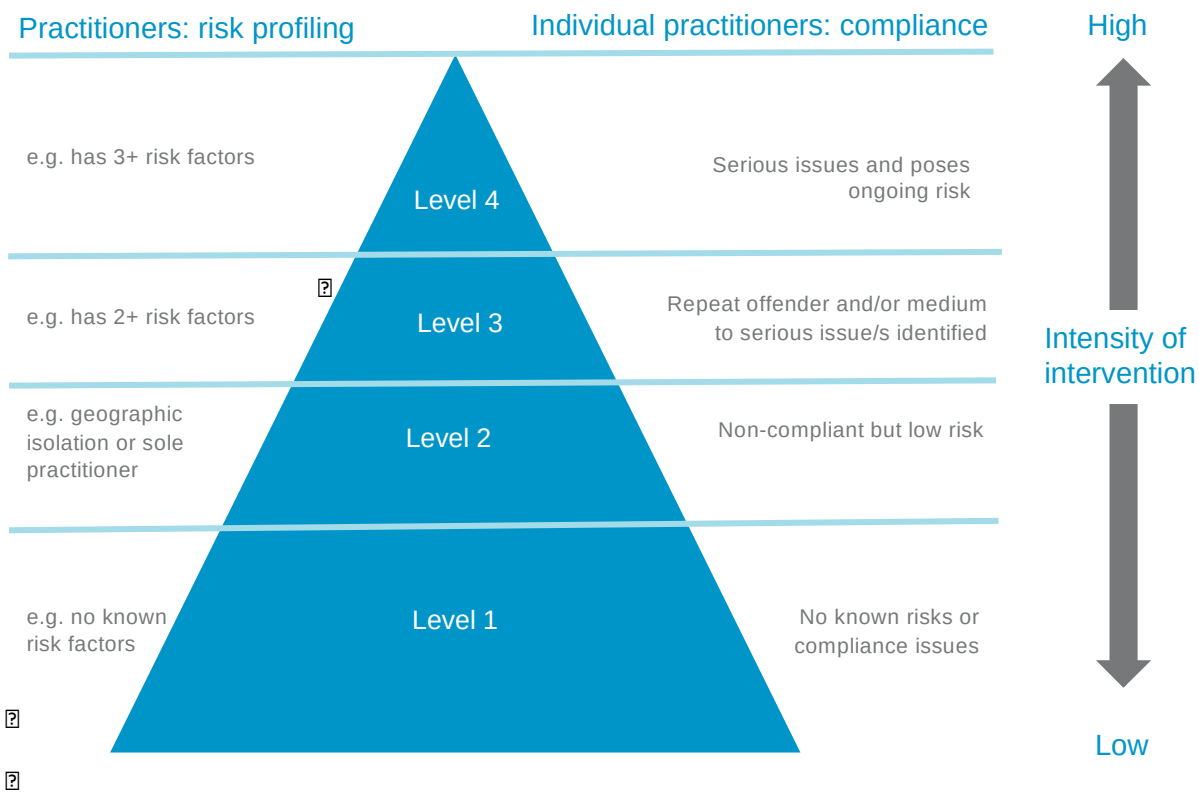
[5] See the literature review on recertification for further information about identifying, supporting and managing risk for practitioners.

[6] See the literature review on recertification for further information about risk, competence and fitness to practise risk factors and regulatory responses.

beyond). Depending on the intervention/sanction, as well as a practitioner's behaviours, attitudes and actions, it is foreseeable that a very small group of practitioners may move up and down between levels 2, 3 and 4. However, if we have successfully matched our recertification programme with a practitioner's risk factors, overtime we should see fewer practitioners reaching the thresholds for level 2 and beyond.

This risk framework is consistent with our decision to be a right-touch risk-based regulator. It also has potential as a way to help identify, at an earlier stage, those of our practitioners who may require assistance in order to meet our recertification requirements.

Figure 1: risk-based framework group versus individual approach



Another way of looking at and managing risk

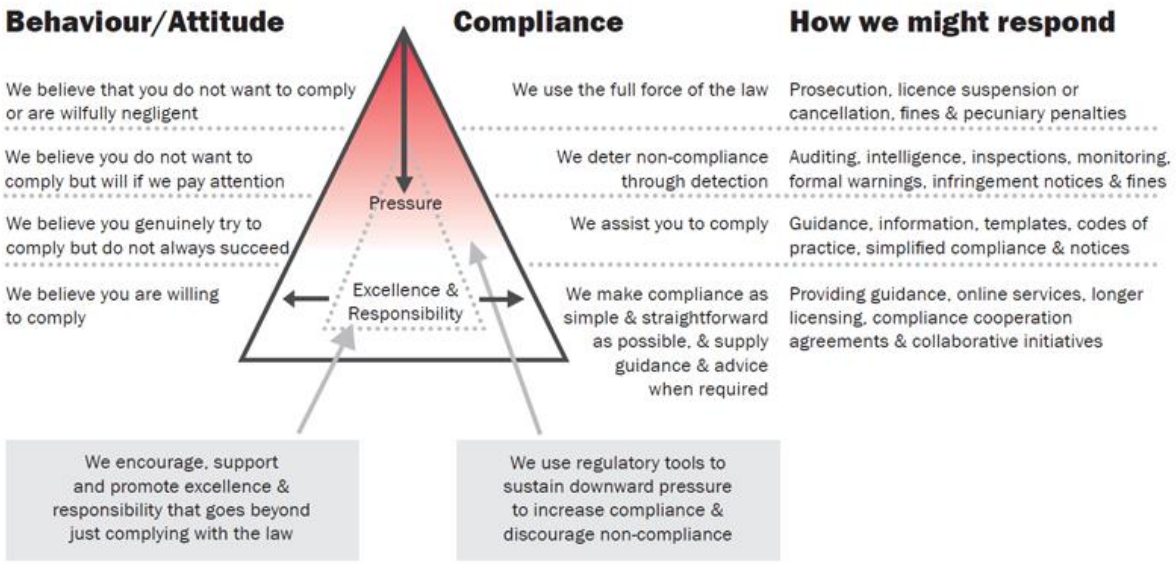
In 2015, the Department of Internal Affairs (DIA) undertook a review of New Zealand's Fire Services. The compliance framework proposed in DIA's 2015 discussion document focuses on different attitudes to compliance, the regulatory tools available to encourage compliance and how a regulator might respond, and takes the risk-based framework presented in figure 5 (above) a step further.

Both frameworks recognise that graduated (i.e. proportionate) responses should be matched to the risk posed. However, the main difference in the proposed Fire Service framework is the graduated responses relate to the behaviours and attitudes exhibited by a person and the tools used to respond and/or change behaviours. As such, risk factors are not explicitly referred to in this model, although they can be implied in the descriptions of behaviours and attitudes.

The DIA framework is included here as another example of how our recertification framework might support and respond to practitioner behaviour and compliance in the future.

It is likely, that the future direction of our recertification framework will need to include both components (risk and compliance) and the impact that behaviours, attitudes and environments have on these components.

Figure 2: expected numbers of people with different attitudes to compliance and the type of responses that are appropriate for each group of people



Source: Fire Services Review: Discussion Document (May 2015), Wellington: Department of Internal Affairs