

Regulatory Problem Solving

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EMPA – Governing by the Rules 2022

Objectives

- Familiarity with the problem solving approach as reflected in RIA
- Framework for your syndicate exercise and research essay
- Complement to GBR tools



Poll

Approach

- Health practitioner scenario
- RIA 'problem solving' steps & policy-making challenges
- Questions, reflection

1: Problem analysis –
why the need to act?

Describe the potential harm or problem

Examine +/- factors (without current regulations)

Clear problem statement – reference point ('base case') and case for action

Supporting evidence to explore the problem

2: Objectives of action –
what does the government aim to achieve?

Intermediate and long term goals, sets up evaluation approach

3: Identify feasible options –
what courses of action could be taken?

Options development

Option A

Option B

Option C

Option D

Option E

Broad inputs: the problem, stakeholder views, tools available, related regimes, approaches elsewhere

Option A

Option C

Option D

Refine feasible options: legislation, practicality, other design criteria

4: Impact analysis –
what are the expected impacts of options and what is the preferred option?

Analysis and comparison of effects

Analysing to consider all impacts against an appropriate reference point ('base case'), to find the option that maximises net benefit for the community

5: Preferred option –
how will the preferred option work?

Preferred option

Regulation of cosmetic surgery

Scenario for Problem Solving

Context

- Cowboys
- Injuries
- People misled/info and power imbalance
- Expectations not matching reality

Overview and questions

- What is cosmetic surgery?
- Who can do it?
- What bad stuff can happen?
- *What makes it happen?*

Provided resources

- Ahpra – on oversight systems, professional standards and compliance monitoring
- Consultation paper – on:
 - the market context
 - media reporting of issues (hygiene, safety, care, poor outcomes and marketing/social media practices)
 - challenges (standards and education, confusion about titles, under-reporting, regulatory complexity and marketing impacts on patient choices)
 - Ahpra role (registered providers) and regulatory tools (codes, notification assessments, advertising restrictions, title protection, consumer information)
- RIS – consultation on use of the title 'surgeon' as a tool to 'manage' cosmetic surgery

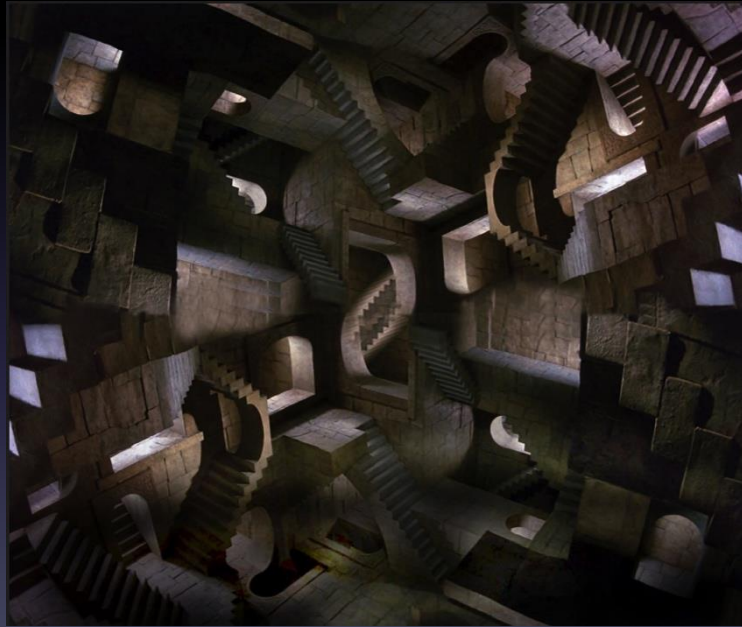
Generalising the scenario

- Grounded in the problems and risks
- Clean state assessment: about regulatory concepts – abstracting the topic
- Thinking about tolerance to the risk – all operations carry risks, which are worse?



Regulatory space vs problem

- The regulatory space is complex
- Focus today on the harm and what drives it



Starting with the problem

- What's the mischief?
- *Who* is doing *what*?
- The problem is the problem...

Breaking down the problem

- In terms of risk...
- Cutting and carving the data...
- Classes of problems:
 - Market failure
 - Drivers of compliance
 - Behavioural insights
 - Regulatory or government failure

Thinking about risk balance...



Residual problems and base case

- What is happening out in the world?
- Or – what would happen if we didn't have these laws?
- Who takes care of the issue themselves?
- Who cares?
 - Does the market act?
 - Do other laws already have a role?
 - Does this mean they are followed?

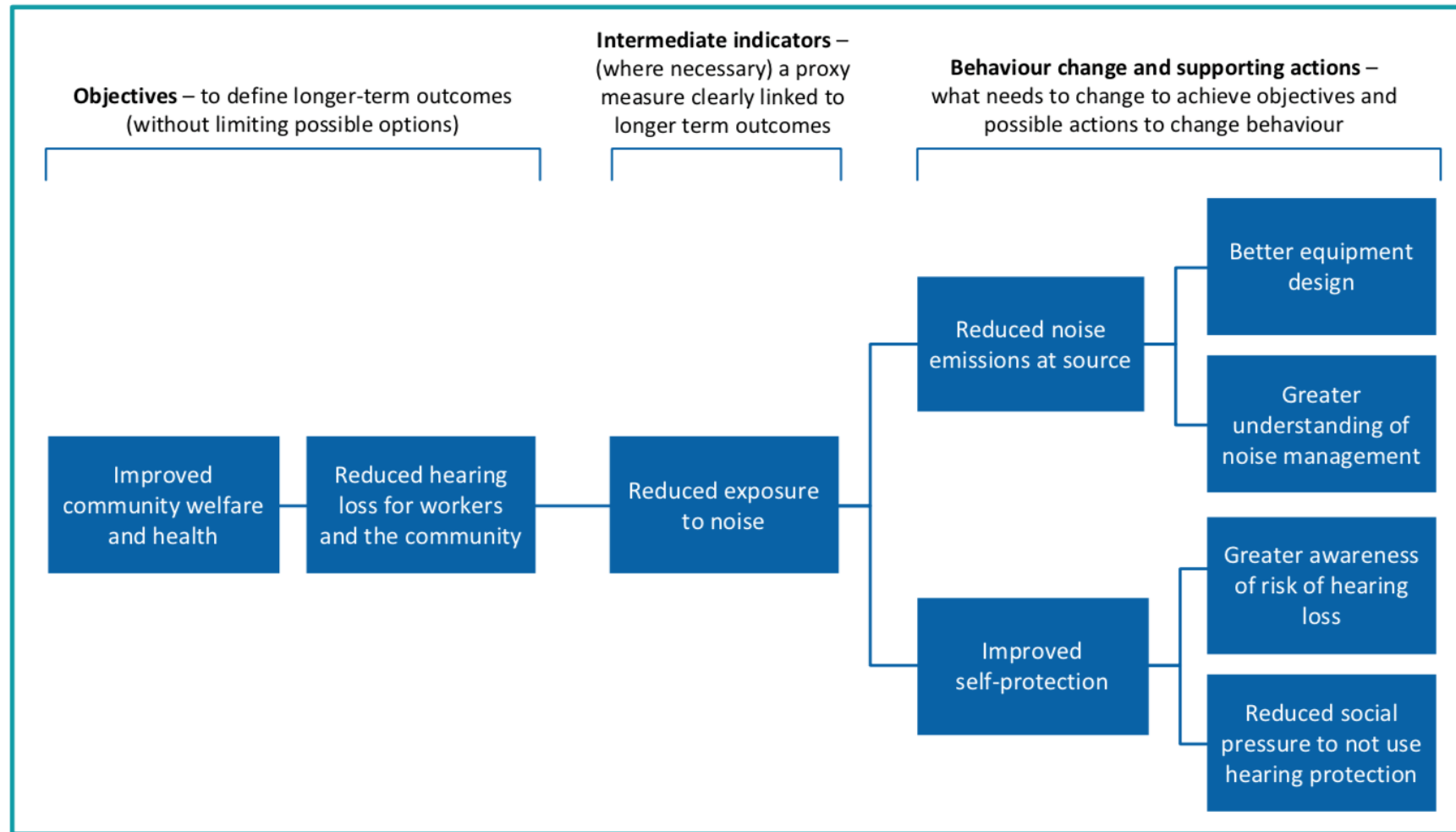
Group discussion

- What's the problem?
- How do you carve it?
- Which bit of the issue might require regulation?

Setting objectives

- Making a dent in the problem – reduce a 'bad'
- Promoting a 'good'
- Outcomes logics – less of X, enabling Y
- Focus on the outcome and area of change – not the specific intervention

Figure 3 – Hypothetical example of long-term outcomes and intermediate indicators



Considering options

- Regulation isn't just 'rules' – what else would target the behaviour of concern?
- If compliance is the issue, what might impact compliance actions and attitudes?
- Thinking broadly about where to intervene
- The most important option – do nothing...? (actions bring consequences)

Areas of intervention

- Market failure: address the issue (e.g. information, market power/access)...
- Shape technology, equipment...
- Control behaviours, actions...
- Create legal obligations...
- Deterrence, punishment...
- Visibility, monitoring...
- Flow of information...

Discuss – possible options

Some potential pitfalls



Targeted, but prescriptive



General, with unintended consequences



Wrong balance of controls – pre vs post

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Preferred option

Wrap up

- Start with the problem
- The problem is the problem
- Objectives to ground options
- Importance of base case and 'do nothing'
- Regulation as behaviour change

What's your mischief?