

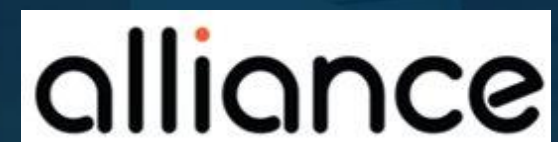
“Who gets to call themselves competent?”

Lessons from the AU, US and UK

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Alliance



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Regulator perspective: Michelle

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The Issue: self-certifiers & regulators

Without technical expertise, territorial authorities may:

- Find it hard to assess or challenge claimed competence
- Assess the quality of advice
- Costs may not be recoverable outside NESCS



Credit: CrankyUncle.com

A solution?

David Mulholland Consulting Engineer Ltd v Whanganui District Council

[2018 NZEnvC 10]

“It seems to make perfect sense...for a body in the position of a Council...to be able to rely upon an independent and knowledgeable source on the question of whether any particular engineer has suitable qualifications and experience in the particular field.”



‘She’ll be right’: Professional Indemnity Insurance!



Professional indemnity insurance transfers financial risk

Professional accreditation manages competence and credibility

Regulators: insurance doesn't:

- Ensure good service/advice
- Prevent trouble
- Protect your reputation

Practitioners:

- Councils may pursue practitioners for compensation *despite* insurance payout- you may need to pay twice!



Accreditation *mitigates risk*; insurance pays when prevention *fails*

	Professional Accreditation	Professional Indemnity
Purpose	Assurance of competency	Financial protection against <i>claims</i>
Function	Risk mitigation	Financial risk transfer
Timeliness	Quality assurance from the outset	Does not <i>prevent</i> poor practice
Who it applies to	The practitioner	The insurance holder regardless of who the advice came from
Who it protects	The practitioner, their clients, public	The practitioner and the organisation using their advice
Trigger	Currently voluntary	A claim
Demonstrates competence?	Yes	No
Ensures ethical conduct?	Yes	No
Disciplinary power?	Yes	No

Using both is defensible professional practice



KEY TAKEAWAYS

REGULATORS

- 1. Check what *your* insurance policy says. If it is silent, ask.**
- 2. Consider CEnvP(SC) requirements in procurement policy to mitigate risk**

KEY TAKEAWAYS

PRACTITIONERS

- 1. Position you/your organisation to be a low-risk procurement choice**
- 2. Ask your insurer for a premium reduction for CEnvP(SC) accreditation**



Australian perspective: Craig

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Competence can't be claimed

It needs to be tested



Who gets to call themselves competent

CEnvP-SC - what works?

- Scheme solves 'who is competent' question
- Competency / proficiency NEPM alignment
- Judgement, not just knowledge
- Ethics / CPD embedded, not a bolt on
- Self-declaration risk is removed



Who gets to call themselves competent

CEnvP-SC – challenges / opportunities



- Not a late career badge
 - Application opacity
 - Career shaping value
- Early career certifications
- Regulators and contractors

Who gets to call themselves competent

CEnvP-SC – learning from AU experience

- Principles hold value
- Mentoring frameworks and grad programs
- Encourage early / ongoing self assessment
- Embed in regulation



US perspective: Stan*

*Career experience disclaimer

Regulatory setting

- No federal certification / qualification / scheme
- Two states have formal schemes (MA and NJ)
- Other states rely on:
 - Professional licenses (PE, PG, LG)
 - Federal training programs (HAZWOPER)
 - Other certifications (CEP, CHMM)

PRACTITIONER

40 C.F.R. §312.21

[ASTM E1527]

STANDARDS

- ASTM Standards
- Federal Standards & Frameworks
- State-Level Standards

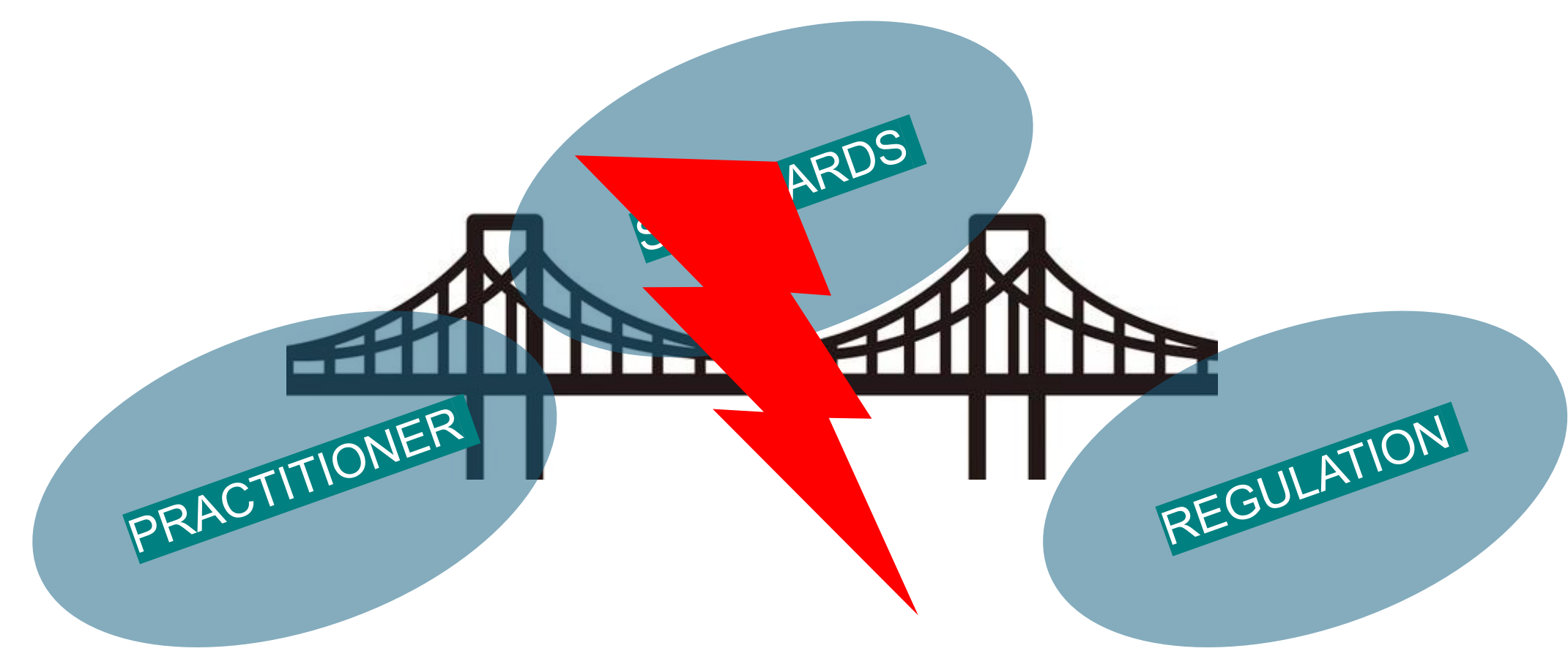
Regulatory drivers

- CERCLA (Superfund and 'polluter pays')
- RCRA Corrective Action
- State-Level Regulators

REGULATION

Example: Phase I Investigations (PSI) [ASTM E1527]

Purpose: *'to define good commercial and customary practice ... for conducting an environmental site assessment'*



Results of not following the standard

- Loss of CERCLA liability protection (*'polluter doesn't pay'*)
- Financing / transaction delays (lenders insurers, investors often require a Phase I ahead of sale/purchase)
- Reduced legal defensibility
- Increased business and environmental risk
- Negligence and potential loss of certification

All of these results have tangible fiscal and legal consequences.

Take aways

- Highly litigious environment
- No national certification, but heavy reliance on standards and frameworks
- Best practice driven by high bar set by stringent regulation, standards and legal precedence

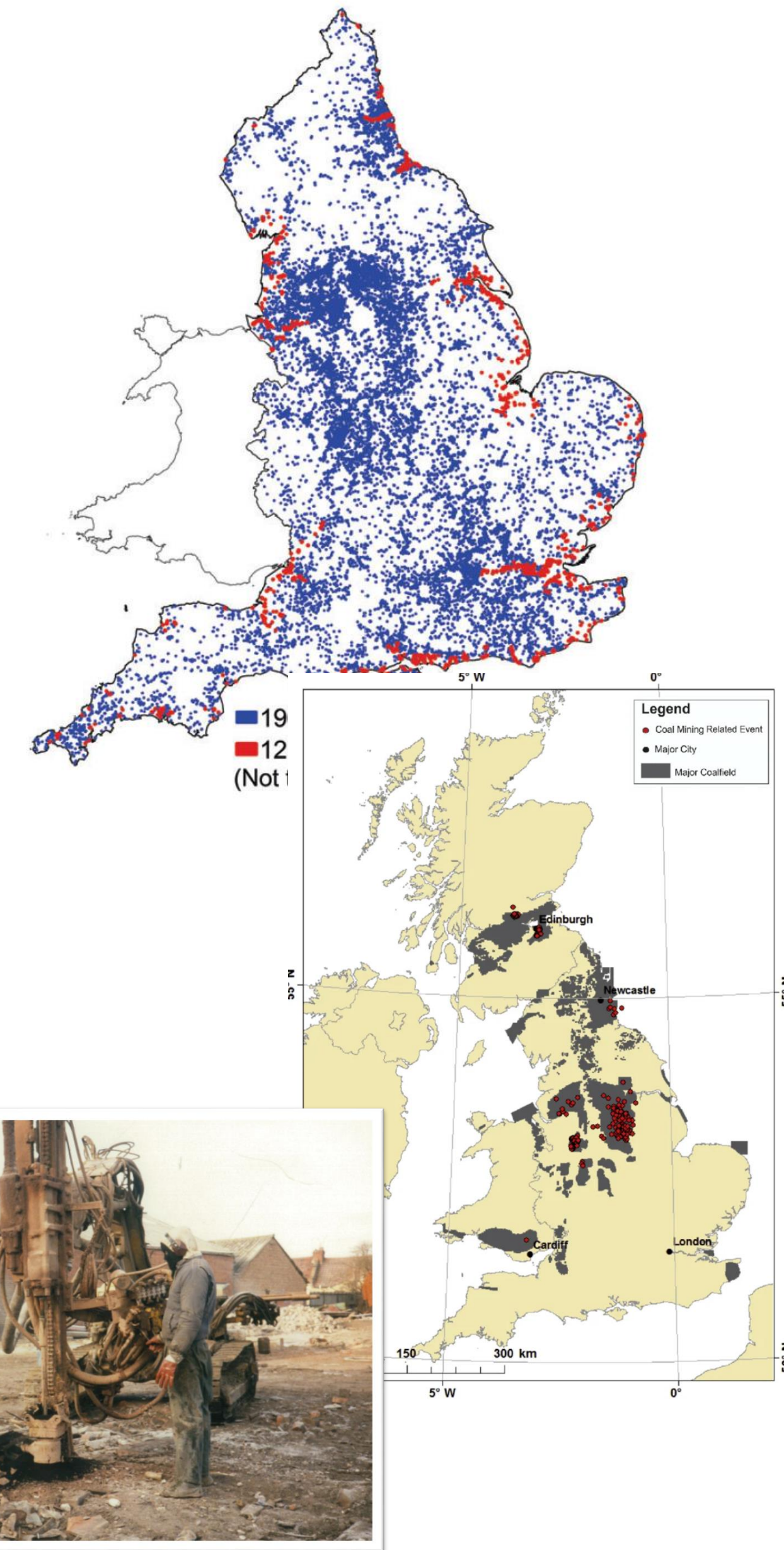


UK perspective: Simon


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UK Context

- The UK is a mature contaminated land market with significant legacy contamination (industrial revolution and before) and has been operating +40 years.
- My journey started in 1986.....
- The guidance in those days was minimal – leveraged Dutch and USEPA “risk” criteria etc.
- The only certification available (to non-engineers) was Chartered Geologist or Chartered Water and Environmental Manager.
- Obtaining certification was considered a “rite of passage” for professionals.



Competency in the Current UK Market

- 1,000's CL practitioners have 1 if not 2 charterships (CGeol, CSci, CEnv, CChem, CWEM) – verifies professional “maturity” and how you operate/practice (ethics, CPD) – not necessarily what you practice.
- Chartership is still seen as a “rite of passage” and certain (good) employers push staff to get it.
- Specialist in Land Contamination (SiLC) – gold standard certification. 
 - Not mandated by regulation – instigated by the Urban Renaissance Report in 1999. Industry-led, backed by the central government.
 - The certification system is about 27 years old.
 - Relies on voluntary professional support.
 - Only about 225 SiLCs – code of ethics, CPD (*compare this with CEnvP-SCS >330 in NZ and Aus*).
 - Need chartership for SiLC – SiLC is significantly narrower and deeper in terms of practice area/focus.
 - Certification provides confidence that you have a trusted/highly experienced practitioner.



How Does UK Competent Work Occur.....

In the UK, **competent contaminated land practice is not guaranteed by a single credential**, but by the **combined weight of:**

- Mature regulation.
- Clear guidance.
- Active regulatory challenge.
- Professional accountability.
- Peer scrutiny.
- Market expectation.

SiLC strengthens confidence (*in the work*) – **but the “system” does not rely on it** to solely ensure competence.



Wrap up

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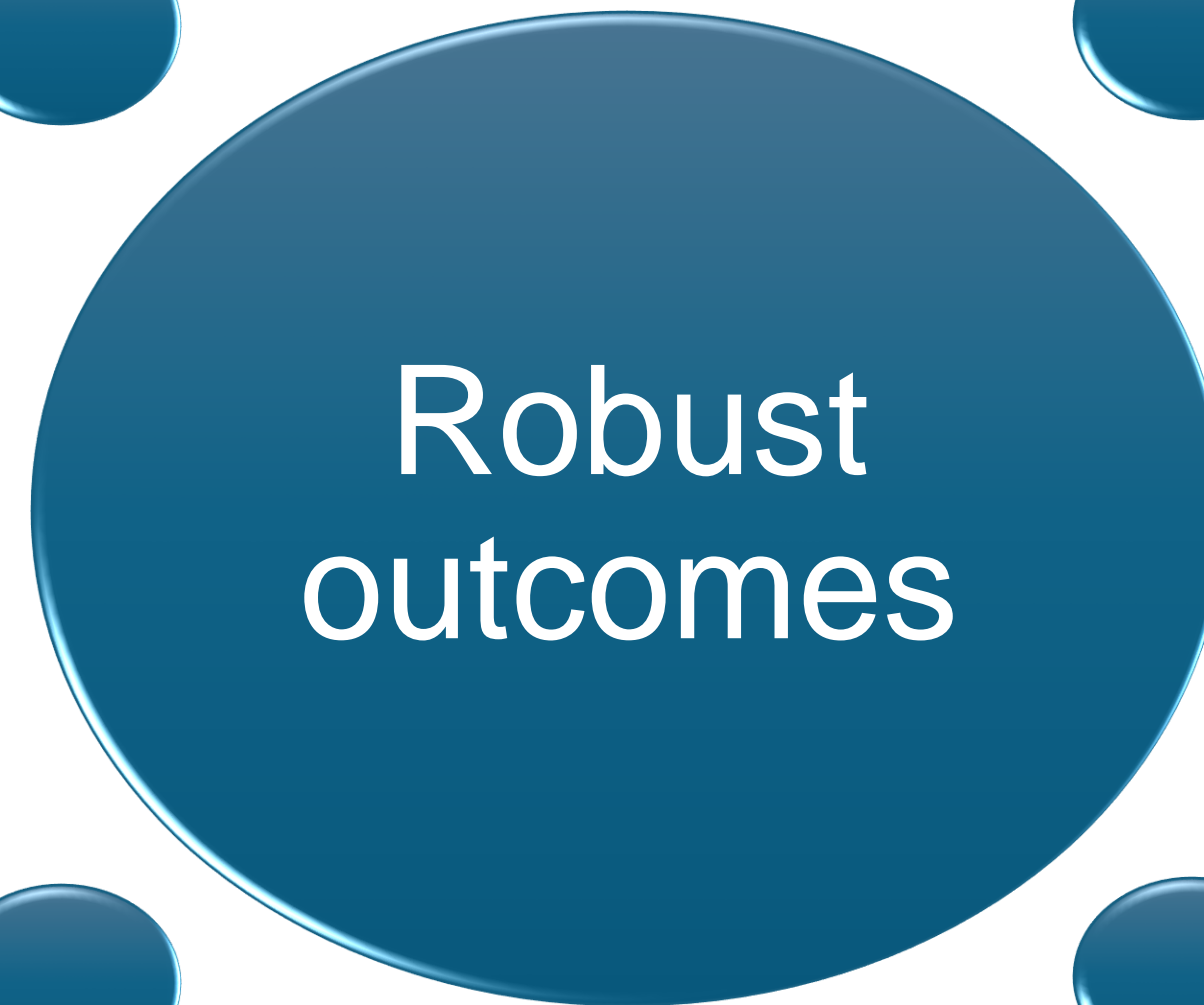
Accreditation –
chartered/certified, ethics,
and CPD



Regulation – integrated



Mature market – that
knows what good looks
like & with feedback



Industry bodies and networks –
conferences, training, forums etc.



Well-trained practitioners
– education and experience



Guidelines/standards



An effective system needs all these elements working together

Do we have this in New Zealand??



Closing Thoughts.....

- **Elephant in the room is the \$\$'s ascribed to the contamination liability:**
 - NZ CL liability costs are **low** compared to Australia, the UK and the USA .
 - Because our other “guard rails” are not as robust as those of other countries, we place too much reliance on SQEP (and CEnvP-SCS).....
- In summary, in terms of competence and accreditation (focus on site closure, which is the ultimate goal).
 - **Australia** – (mature market) uses accreditation (in particular the auditor model) to replace trust in the decision-making process.
 - **United Kingdom** – (very mature market) uses accreditation to support trust in the decision-making process.
 - **United States** – (very mature market) accreditation is not the primary trust/decision-making model, relies on lawyers, insurers, regulators, and enforces compliance.
 - **New Zealand** – (not so mature market) using accreditation to account for/accommodate uneven support mechanisms (wrong tools in the toolbox).



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