MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

New Zealand's International Regulatory Cooperation Toolkit

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Outline

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Reasons for cooperating

- To lower barriers to trade and investment:
  - *Reducing costs of regulatory compliance and participating in multiple markets.*
  - *Facilitating increased participation in global value chains and international production networks.*
- To enhance regulatory capacity and capability, and build confidence and trust.
- To increase policy and regulatory effectiveness:
  - *Enhancing influence in international context (e.g. standard setting).*
- Think about who to cooperate with when considering reasons for cooperating.

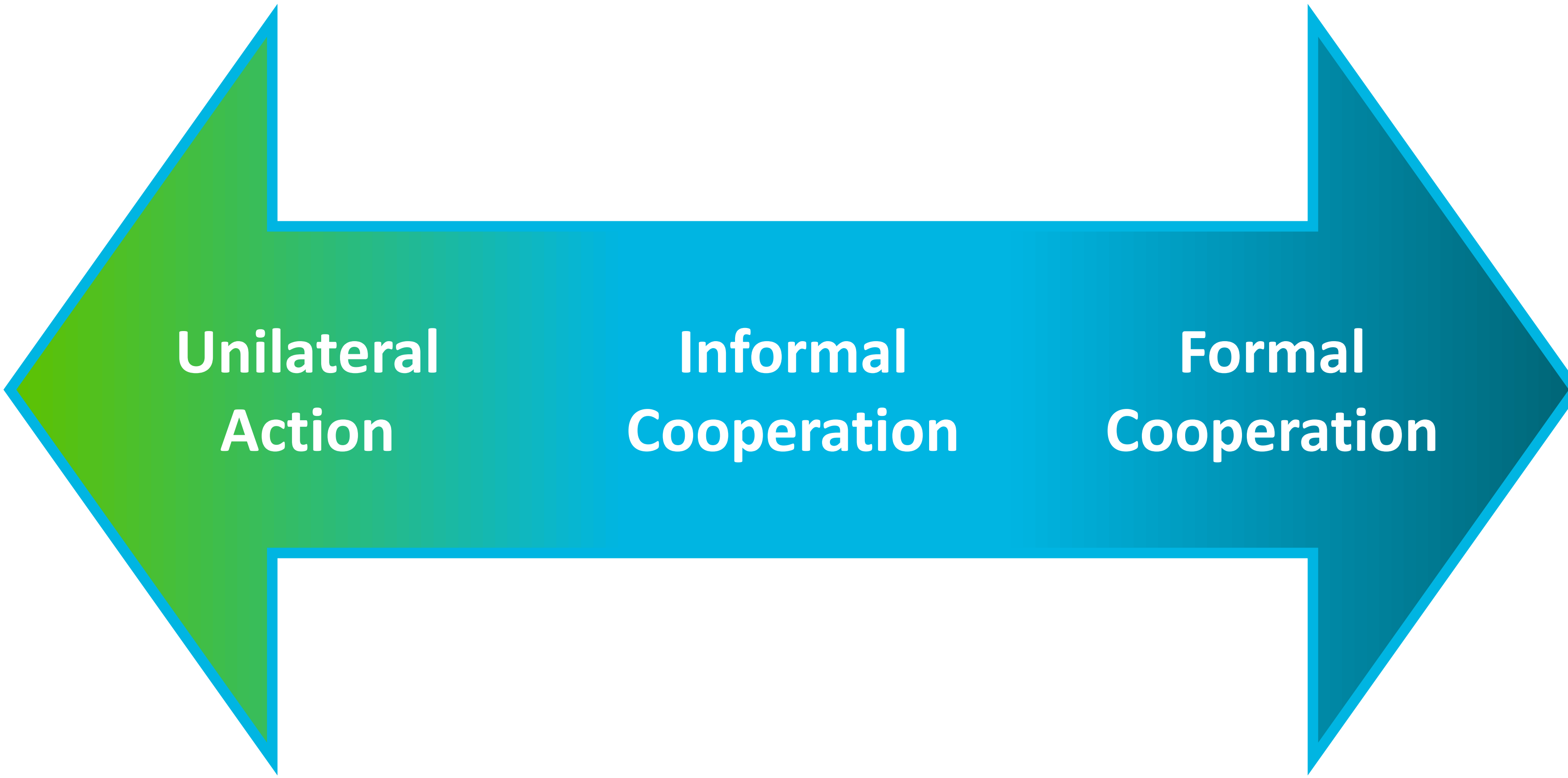
Motivation for the toolkit

- New Zealand's experience with Australia in regulatory cooperation.
- Desire to document our experiences and lessons learnt, as a resource for domestic policymakers and regulators.
- New Zealand government departments have statutory regulatory stewardship obligations.
- End outcome – a web-based toolkit which is useful, relevant, and will be of pragmatic use.

Introduction to the Toolkit

- The Toolkit will be available online to provide policymakers and regulators with practical guidance on options available when undertaking regulatory cooperation.
- It documents experiences and lessons learned as a resource.
- It is consistent with, and complements, a Regulatory Impact Analysis framework.
- It can be used to make choices about different IRC options. It provides guidance to:
  - be clear about objectives
  - identify range of options
  - assess benefits and costs of each option
  - bear in mind past experiences and lessons learnt
- It is not a template or a formula for undertaking IRC.

The Cooperation Spectrum



Unilateral action

Unilateral adoption/recognition:

- Basing policies on those of another economy/compliance with laws of another economy deemed to satisfy domestic requirements.
- Unilateral recognition of test results.

Benefits:

- Maximum flexibility in determining regulatory settings.
- Reduces costs for firms.
- Makes effective use of developments undertaken by others.
- Supplements domestic capacity and capability.

Issues:

- Does not provide for mutuality.
- Limited ability to influence policies or laws in other economy.
- Impact of reduced domestic capability.
- May not get information on emerging problems or other issues.

Informal cooperation

Key features:

- Policy coordination/information sharing/cross agency appointments/work-sharing.
- MOU or less formal but does not create binding obligations.
- Implemented administratively - does not usually need a domestic legislative basis.

Benefits:

- High flexibility to determine settings.
- Efficiency gains from sharing resources.
- Information flows support mutual learning.
- Strengthens trust and confidence – may lead to formal cooperation.

Issues:

- May provide for some but not full mutuality.
- May not be as durable as formal arrangements – need to maintain goodwill and strong relationships.

Formal cooperation

Key features:

- Recorded in an MOU, arrangement or treaty.
- Creates obligations that are binding or have strong moral force.
- Requires domestic legislation to implement.

Benefits:

- Strong mutual commitment.
- Greater certainty of outcome.
- More durable.

Issues:

- Can be difficult to exit.
- Reduced ability to determine own policy/regulatory settings.

Formal cooperation includes:

Cooperation on regulatory processes/work sharing:

- Information or assessment from one regulator is used by another to fast track or simplify the regulatory process.

Enforcement cooperation:

- Regulatory agencies provide mutual assistance in gathering evidence, sharing information or other investigative assistance.

Mutual Recognition:

- Two or more jurisdictions retain their own rules and institutions, while recognising rules or decisions of institutions of the other.
- Accept conformity assessments from each others' bodies.

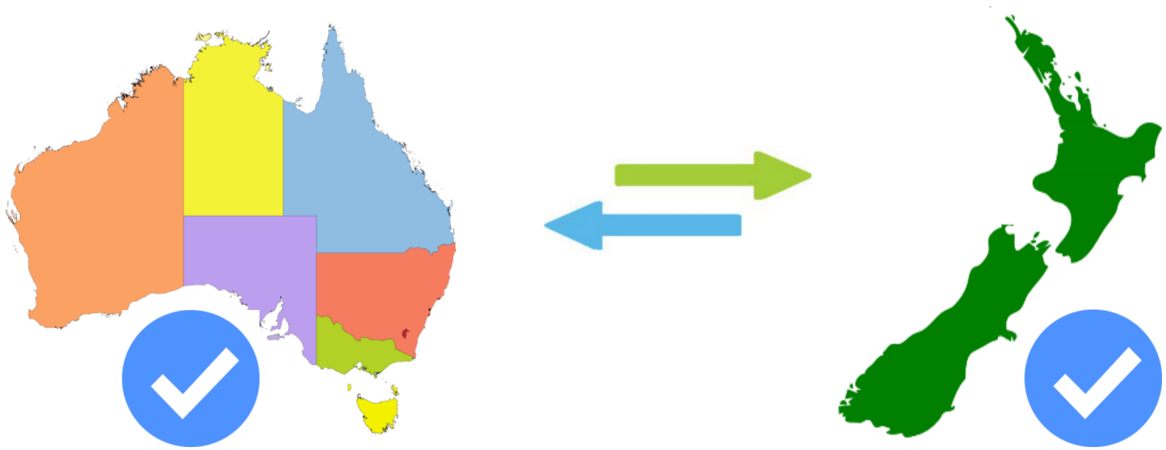
Harmonisation:

- Two or more jurisdictions harmonise rules or standards (substantially the same, not identical), or jointly develop standards to apply in both jurisdictions.

Example 1: Trans-Tasman Mutual Recognition Arrangement (TTMRA)

Key principle:

If a good may legally be sold in one country… → **…It may legally be sold in the other country,** → **…regardless of differences in sales requirements between the countries.**



Example 1: Trans-Tasman Mutual Recognition Arrangement (TTMRA)

- Therefore, any requirements before point-of-sale do not apply, if a product meets the requirements of the other country. This includes regulations such as:
  - Product standards
  - Packaging and labelling
  - Inspection / conformance assessment
  - Any other requirement that would prevent or restrict the sale of goods
- This is founded on a mutual understanding and trust in the other country's regulations and conformance mechanisms.

If it's good enough for one country, it's good enough for the other

Example 1: Trans-Tasman Mutual Recognition Arrangement (TTMRA)

- Laws important to a country’s sovereignty are excluded, including:
  - Customs control and tariffs
  - Intellectual property
  - Taxation
  - Specified international obligations.
- Countries can follow a process to temporarily or permanently exempt other specific laws. These currently include items such as:
  - Firearms, fireworks, classification of publications, film and computer games, gaming machines, road vehicles, hazardous goods, dangerous chemicals, new organisms, therapeutic goods, tobacco products, ozone protection, agricultural and veterinary chemicals, and others.

Example 2: Joint Accreditation System of Australia and New Zealand

JAS-ANZ

- Established under a Treaty between the New Zealand and Australian Governments in 1991.
- Four Goals: Integrity and Confidence, Trade Support, Linkages and International Acceptance.
- Report to the Minister for Commerce (NZ) and Minister Industry (Australia).
- Self funding, Not for Profit.
- 141 public and proprietary schemes: Management system certification, Product certification, Personnel certification, Inspection and GHG validation and verification.
- 130 Accredited bodies.

Lessons learned

- Be clear about the problem and objectives.
- Buy-in from all levels is essential.
- Partnering with others, not just governments, is a critical success factor but also requires maintenance over time.
- There is a challenge in balancing the short vs long-term focuses.
- There are benefits for new policy areas for a jurisdiction.
- Undertaking IRC can have opportunity costs.
- IRC arrangements need to be reviewed regularly.

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