

# Product Safety – A New Zealand Perspective on a Modern Risk Based Regulatory Approach

Liz MacPherson

Deputy Secretary – Effective Markets Branch

Ministry of Economic Development

General Manager – Ministry of Consumer Affairs

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Development



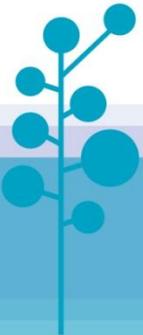
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# Overview

Brief overview of the regime in New Zealand

Increasing risk – response from regulators

How should we think about our roles as modern product safety regulators



# The Role of the NZ Ministry of Consumer Affairs

Overall responsibility for a default product safety regime in NZ - both for policy and administration of a 'horizontal' approach to product safety law (Fair Trading Act and Consumer Guarantees Act)

NZ Commerce Commission enforces bans and mandatory standards and recalls

'Risk based' approach with a number of regulatory options

Specific product areas covered by vertical safety regimes – MCA works closely with appropriate lead agencies

Close monitoring of international data sources and co-regulators internationally – particularly 'Trans Tasman

**Trans Tasman Relationship** founded on:

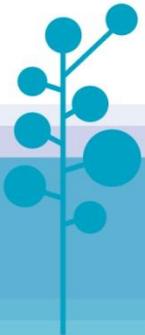
- A Single Economic Market / TTMRA
- Mutual recognition of product standards with aligned legislation and harmonisation where appropriate
- Increasingly seeking opportunities to achieve economies of scale and scope in regulatory action



# Increasing Risk – The Response from Regulators

Consumer product safety regulators have responded by intensifying and modernising their strategies to include

- Seeking a better balance between early warning and prevention
- Developing a common vision of import safety with trading partners
- More international and domestic collaboration - data sharing, networked product safety alert systems, mutual recognition agreements
- Greater risk-based proactive surveillance to improve accountability and deterrence
- Greater encouragement of good manufacturer and importer practice



# The Influences on a modern product safety regulator

The primary responsibilities for safe products and the safe use of products rest with Industry and Consumers - This is based on some assumptions:

1. Safety is best managed at source
2. Market forces – influence the performance of producers / suppliers
3. State intervention can create Moral Hazards:
  - (i) For consumers – ‘the state will look after us so we don’t have to’
  - (ii) For industry – the risk / consequences of getting caught driving behaviour as opposed to ‘doing the right thing’

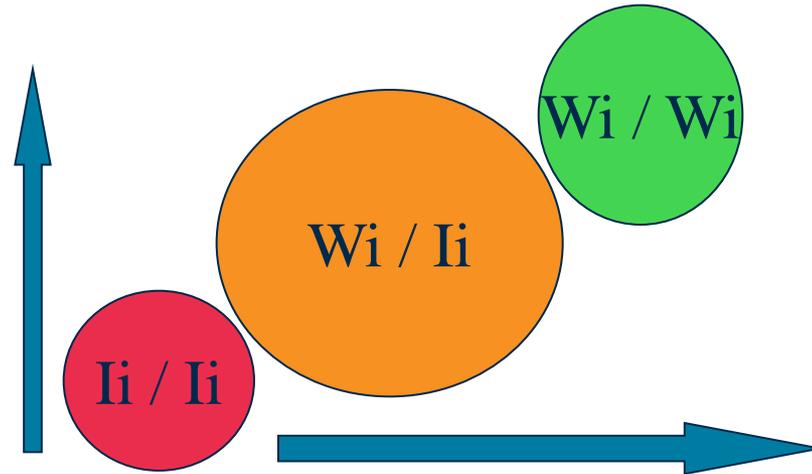
**BUT** there is a rationale for state interventions:

<b>(i) Hidden Risks</b>	<b>Risks not easy to observe or the potential effects of which arise over the long term</b>
<b>(ii) Incentives</b>	<b>Creating the right incentives and providing the right information</b>
<b>(iii) Non Compliance</b>	<b>Dealing with the ‘non compliant fringe’</b>

# Modes of State Intervention

Based on Robert Baldwin's model

Well Informed



Well Intentioned

Well-Intentioned / Well-Informed	Light Touch / Self Regulation
Well-Intentioned / Ill-Informed	Respond to information from the state
Ill-Intentioned / Ill-Informed	Robust approach to securing legal compliance

# Braithwaite's Pyramid

## Possible Mitigating Strategies

Incomplete or  
Irrational 'Actor'  
(Needs Insistent  
Strategies / Command)

**Incapacitation**

Regulatory Action

Rational 'Actor'  
(Needs Persuading)

**Deterrence**

Warnings  
Instructions

Virtuous 'Actor'  
(Self Regulator)

**Persuasion**

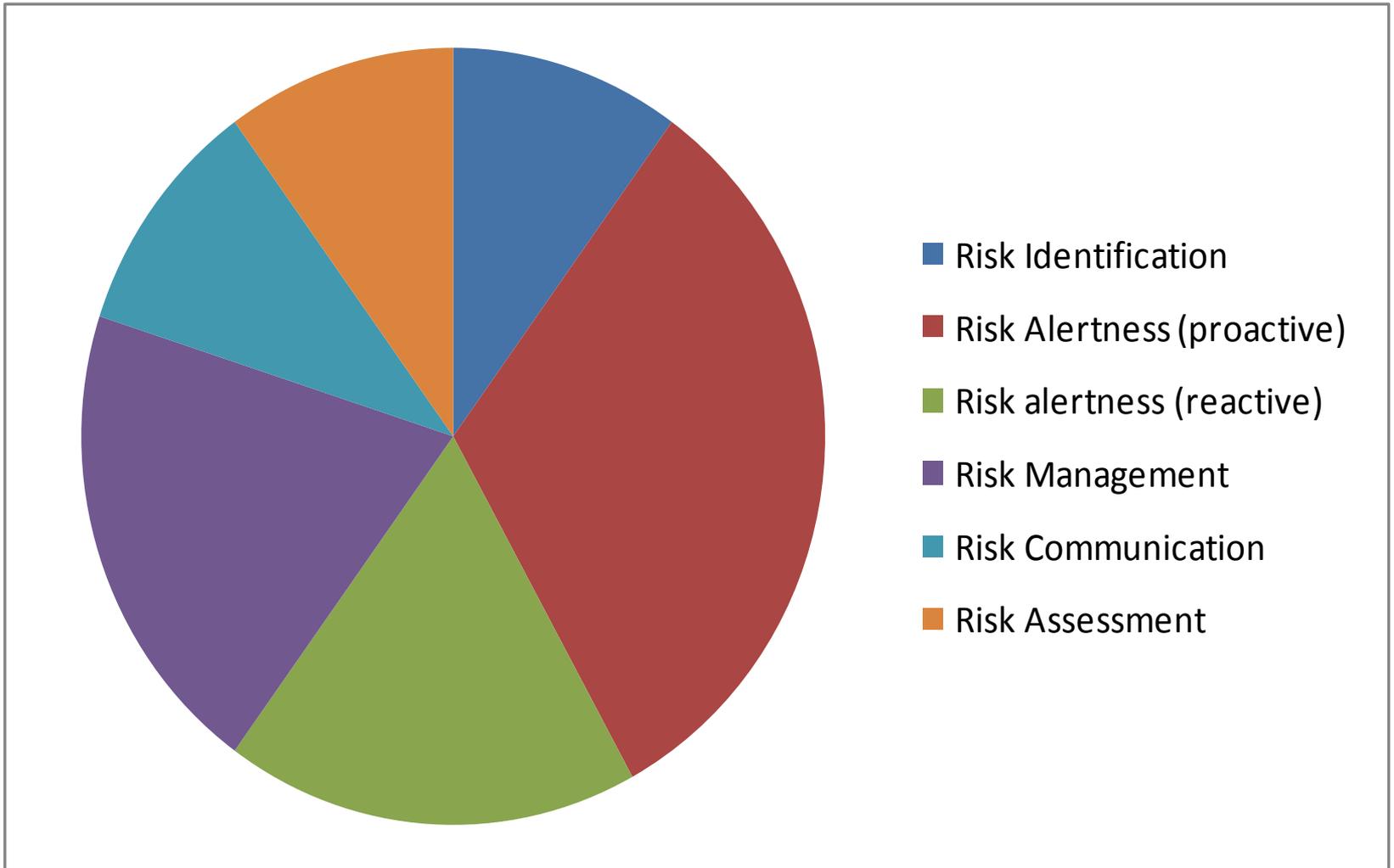
Information  
Advice



# Activities of a Modern Safety Regulator

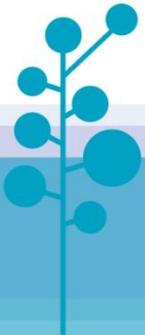
Function	Issues
<b>Risk Identification</b>	What is likely to give rise to risk?
<b>Risk Alertness</b>	Reactive and proactive assessment of what and where risk is coming from
<b>Risk Assessment</b>	The formal evaluation of risk
<b>Risk Management</b>	Adopting the optimal strategy e.g. <ul style="list-style-type: none"><li>•develop international / domestic product standards</li><li>• strengthen legislation</li><li>•take direct enforcement action</li><li>• strengthen incentives on firms</li></ul>
<b>Risk Communication</b>	Engaging with community & stakeholders

# What is the right balance?

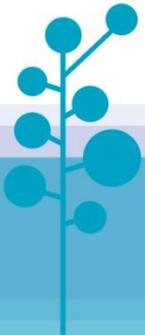


# Questions

1. Is this the right set of key of functions?
2. What is the appropriate balance of resources between these functions?:
  - Proactive v Reactive
  - Standards Setting v Stronger Expost Enforcement
  - More Rules v Stronger Incentives
3. Will the appropriate balance differ from jurisdiction to jurisdiction/ On what basis?



**Thank you for your attention**



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