Independent Quality Assurance of Regulatory Impact Statements

Guidance for Agencies

April 2010

THE TREASURY
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About this guidance

Cabinet requires that independent quality assurance (QA) is undertaken on all Regulatory Impact Statements (RISs). [1] If any of the options considered in the RIS are likely to have a significant impact or risk, then this formal QA will be undertaken by the Regulatory Impact Analysis Team (RIAT) in Treasury. For all other RISs, the QA will be provided by the authoring agency.

This guidance has been prepared in response to requests from agencies for more detailed advice on how to provide independent QA of RISs.

It supports the information in chapter 6 of the *Regulatory Impact Analysis Handbook*. It provides more detailed advice on obtaining independent QA and should be read in conjunction with the *Regulatory Impact Analysis Handbook*, the Quality Assurance Criteria and the Overview of required information for RISs.

Questions and feedback

The advice in this document is not exhaustive, and does not attempt to provide detailed guidance on the wide range of circumstances that may eventuate. Enquiries about the information contained in this guidance, as well as advice on non-standard situations can be directed to the RIAT: ria@treasury.govt.nz.

Any comments as to how we could improve this guidance can be directed to guidance@treasury.govt.nz.

1 Refer CAB Min (09) 27/11, CAB Min (09) 38/7A and Cabinet Office Notice CO (09) 8.

Quality assurance requirements

The purpose of quality assurance

The purpose of independent QA of RISs is to provide assurance to Cabinet that it is making decisions on the basis of the best possible advice. It does this by requiring that an appropriate person (someone who is not responsible for producing the RIS) has considered whether the analysis and information summarised in the RIS is of a sufficient standard to properly inform the decisions being taken. The reviewer's assessment is summarised in a formal statement that is included in the Cabinet paper accompanying the RIS.

Background to the current requirements

"Self-assessment" of RISs has been a feature of the RIA regime for some time. In 2009 Cabinet agreed to a number of changes to the system, which included strengthening the incentives on agencies to follow best practice RIA processes and to take responsibility for the quality of their analysis.

QA criteria

The criteria for assessing the RIS are the same regardless of whether the QA is provided by RIAT or the agency. These criteria are provided in Annex A: Quality assurance criteria.

QA statement

The reviewer (whether RIAT or the agency) will provide a formal statement for inclusion in the *Regulatory Impact Analysis* section of the Cabinet paper. As required by Cabinet (and set out in the CabGuide), this statement is referred to as a "government agency opinion on the quality of the analysis". A template statement is provided on p.11.

The role of the reviewer

There are two aspects to the reviewer's role: assessing and assisting. Formal assessment of the final RIS is a mandatory requirement and represents the reviewer's core role. However, the reviewer can also provide assistance to the writer of the RIS, to help lift the quality of the final product. There are choices around the degree to which the reviewer gets involved in the earlier stages of the policy development process, illustrated in Figure 1 below.

These requirements apply to RISs that do not require assessment by RIAT. Agency reviewers may choose to review significant RISs prior to assessment by RIAT, and there are some benefits with this: it can identify and address issues with the RIS before it is provide to RIAT, and it may assist in agency capability building. However, it could also increase the time taken to obtain QA. This additional QA is therefore entirely optional.

Formal assessment (required)

The core role involves assessing the final RIS. Based on our experience, we strongly recommend that at least one iteration of the RIS is allowed for, meaning that the reviewer would provide comments on at least one draft of the RIS.

This applies to the RIS for final policy decisions, as well as RISs that are to be submitted to Cabinet to support any in principle or intermediate policy decisions. However the QA for interim RISs will need to be tailored to the circumstances, taking into account the stage of policy development, the nature of the decision being sought, and the level of analysis possible. At early stages of the policy process, it may not be feasible to prepare a comprehensive RIS, so the quality assurance will need to reflect these constraints.

Both the reviewers and the people responsible for the preparation of the RIS should be clear that the reviewer is concerned solely with the quality of the underlying analysis and its presentation in the RIS. The reviewer's role is not to assess the merits of any policy options considered in the RIS. That is, the reviewer does not have a view on whether the proposal is a good idea. However, they are concerned with the logic and argumentation presented in the RIS (the "convincing" criterion). In practice it can sometimes be hard to draw a firm distinction between the quality of the RIA/RIS and the quality of the proposal. But essentially the reviewer needs to determine whether Ministers have enough information, of sufficient quality, to make an informed decision.

Discussion documents (recommended)

The RIA requirements apply to discussion documents that contain options that may lead to legislative or regulatory change. While there is no formal assessment requirement, it is desirable that quality assurance is provided on draft discussion documents, to help ensure that they will meet the RIA consultation requirements, and provide the basis for a good quality RIS at the end of the policy process.

More detailed guidance on applying the RIA requirements (including the QA requirements) to discussion documents is currently being developed. In the meantime, RIAT is able to provide advice on a case-by-case basis.

Other assistance (optional)

Additional engagement earlier in the policy process can assist in lifting the quality of the analysis, and thereby the final RIS and ultimately the regulatory proposal itself. This assistance role can involve engaging at key points in the process such as:

- Providing advice at the outset of the policy development process on:
    - The RIA requirements and how they should be built into the policy work, including suitable analytical frameworks and tools; and
    - What the reviewer will be looking for in terms of the nature and depth of analysis and the extent of evidence on the problem, impacts and risks;
- Commenting on draft terms of reference for the commissioning of major pieces of analysis (such as cost-benefit analysis), to assist in establishing a suitable analytical framework; and
- Commenting on draft reports on major pieces of analysis.

Preliminary Impact and Risk Assessments (PIRAs) provide a trigger for early engagement.[2] Reviewers may find it useful to commence their engagement at the PIRA stage, to provide early assistance in shaping the quality of the analysis. The reviewer is not required to provide advice on whether the RIA requirements apply or on how to complete a PIRA, though they may choose to provide this role.

The reviewer should take care to ensure that they preserve the independence of their final QA opinion, by focusing on the nature and quality of the analysis rather than the features of the proposal.

QA of significant RISs

RIAT now has discretion to allow agencies to retain responsibility, on a case-by-case basis, for providing the QA on their RIS even when the criteria for RIAT assessment are triggered. RIAT may decide not to formally assess the RIS for a significant proposal under the following sorts of circumstances:

- Where the policy work has been planned (e.g. was on the agency's regulatory plan) and the policy process is robust and has not been rushed;
- There is prior agreement between RIAT and the department on the policy frameworks, standards of evidence and types of impacts to be used;
- Where other relevant departments, agencies, groups or individuals who have expertise in the subject matter have been appropriately involved and consulted;
- The agency has demonstrated that it has robust in-house quality assurance arrangements.

This discretion aims to recognise and give greater autonomy to agencies that take their regulatory QA responsibilities seriously.

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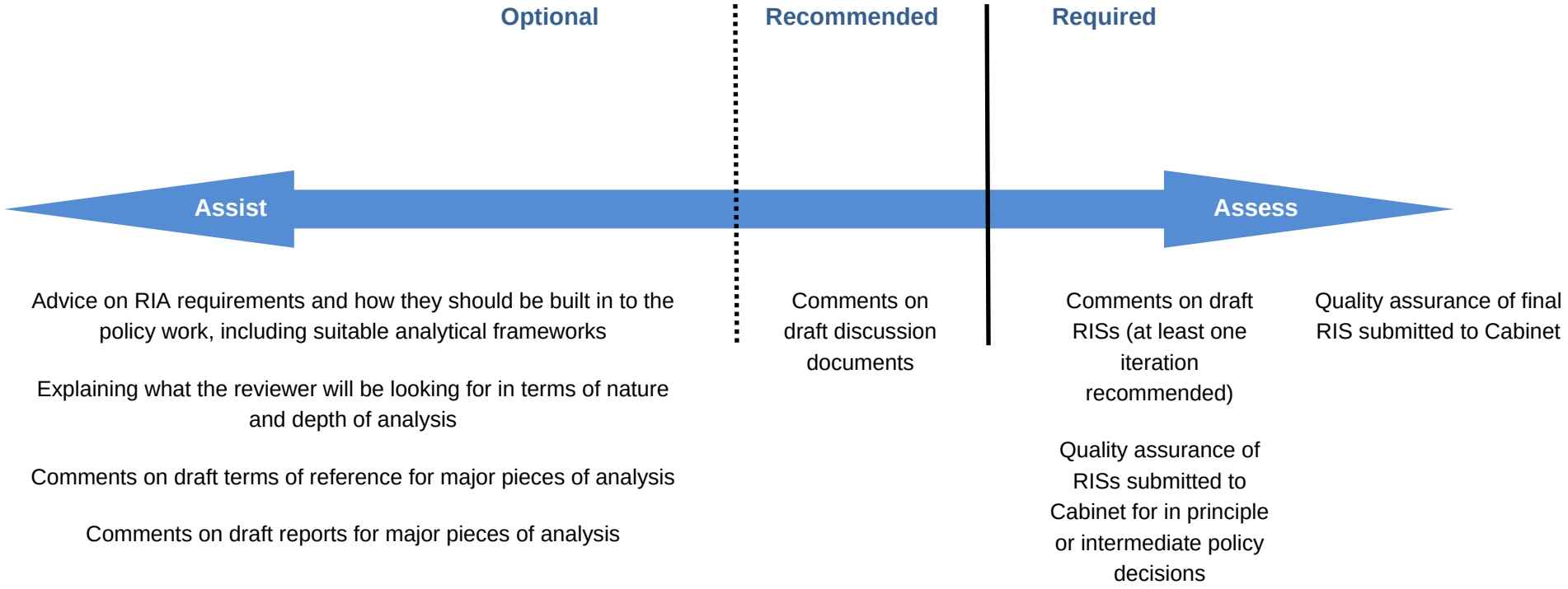
[2] A PIRA must be completed at the outset of the policy development process in order to determine whether the RIA requirements apply and whether RIAT will need to be involved. PIRAs must be submitted to the Treasury vote/policy team for confirmation (refer Section 3 in the *RIA Handbook* for details).

Figure 1: The reviewer's role



Establishing a QA process

Options for obtaining QA

The process for obtaining QA is not prescribed, as agencies will need to tailor processes according to their own structures, policy processes and available resources. Some options are set out in the table below.

Table 1: Possible models for obtaining QA

	RIA panel	Pool of reviewers	External reviewer
Distinguishing features	Permanent or rotating Can contribute to RIA awareness raising/agency capability building and expertise	Identified pool of experienced people/experts from which a panel can be drawn on a proposal-by-proposal basis May be used on an *ad hoc* basis Could comprise internal and external people (e.g. from other agencies) Can contribute to RIA awareness raising/agency capability building and expertise	E.g. people from other agencies, private sector consultants, academics, subject matter experts May be suitable for large or complex pieces of work, or where conflicts of interest are difficult to avoid Less likely to contribute to agency capability building
Particular considerations	Concentrated resource commitment Process for identifying potential conflicts of interest May want chair and secretariat	Timeframes for arranging reviewers and determining process – some pre-agreement may be useful Consistency of review opinion, across proposals and over time Process for identifying potential conflicts of interest	Cost Reviewer needs to be familiar with the RIA requirements and the QA criteria Timeframes for organising review arrangements (incl. contracts) Contractual arrangements, e.g. how to take account of unforeseen changes in the policy process, allowing for iterations

Selecting appropriate people

The Cabinet requirements state that if QA is provided by the agency it must be done by a person or group not directly involved with the preparation of the RIS and nominated by the agency's Chief Executive. This means that:

- The reviewer/s should have suitable **capability** – including a thorough understanding of the RIA regime, and sufficient experience and expertise in policy analysis.
- Internal reviewers should be sufficiently senior as to have sign-out authority on behalf of the agency.
- A certain level of **independence** is required.[3]

Implementing the process

- The QA process should be integrated into an agency's policy development and Cabinet paper submission process. A possible model is provided in Annex B. Agencies may elect to internally review significant RISs before they are submitted to RIAT, but this is optional.
- The PIRA process provides an initial "hook" for engagement. Agencies may see benefit in tracking policy proposals from this initial stage, and internal RIA panels/reviewers may wish to be copied in to PIRA correspondence.
- Regulatory plans provide an additional platform for engagement, and can be used as a basis for communication with those staff likely to be involved in the development of regulatory proposals (i.e. identifying relevant staff and raising awareness of the RIA requirements).
- The reviewer should be provided with **early warning** and have **sufficient time** to undertake quality assurance (ideally 5-10 working days).
- Time should be allowed for iteration with the reviewer, so that comments and queries can be addressed.
- The reviewer should be provided with the completed **disclosure statement**, so that any issues raised in this statement can be factored in to their assessment.
- There should be an agreed process for when the reviewer's final assessment is that the RIS partially meets or does not meet the QA criteria. This process may include arrangements for briefing senior management and Ministers' offices.
- If using a pool or panel of reviewers, the terms of reference for the group should cover how a joint view, and hence final decisions, will be reached and deadlock avoided (e.g. electing a chair with final decision rights).

The reviewer's opinion should be considered independent and final. There may be instances when the policy team responsible for preparing the RIS is unhappy with the final assessment and/or the wording of the QA statement. In anticipation of such scenarios, agencies may

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3 The person providing the QA should not be a member of the same team that has prepared the RIS. In smaller agencies where this is not possible, the QA may need to be outsourced in order to ensure independence (see Table 1 for options).

wish to consider the process by which these situations will be managed (i.e. identifying the responsible senior management and how they will provide support to the reviewer).

Providing quality assurance

Providing comments and advice

As discussed above, the purpose of commenting on draft material such as discussion documents is to help enable the final RIS to meet the RIA requirements. The reviewer's comments should therefore relate to the substance of the analytical methods employed and the analytical process (including consultation), looking to the nature and level of information that will need to be presented in the final RIS.

Areas of focus may therefore be:

- The extent of evidence on the nature and size of the problem, and of likely impacts;
- The analytical framework and techniques including whether an established methodology (such as market analysis or cost-benefit analysis) will be employed;
- Identification and assessment of costs, benefits and risks; and
- The nature and quality of the consultation process.

It is usually helpful if early comments (e.g. on draft RISs) are as comprehensive as possible, to avoid raising substantive issues late in the process. When reviewing draft RISs, it can be useful for the reviewer to provide an indication as to the likely final assessment, highlighting any areas that require further work (and what the specific gaps are) so that effort can be focused on these main areas.

Providing final quality assurance

Material required

The reviewer should be provided with the RIS, including the completed disclosure statement. They may ask for material to test statements made in the RIS, e.g. evidence that has been cited or referenced, assumptions and calculations underlying the cost benefit analysis, or the summary of stakeholder submissions. This material should be provided, so that the reviewer can be assured that the analysis is correct and robust.

Applying the QA criteria

The QA criteria should be used as a basis for the formal QA assessment. The first three criteria are the most important in terms of the substance of the analysis, and more weight should be placed on these aspects:

- **Complete** - ensure that all the required information is provided in the RIS.
- **Convincing** – this criterion relates to the analytical framework that has been employed, and the level and type of analysis that has been undertaken. Chapter 2 of the *Regulatory*

Impact Analysis handbook should be used as a guide to assessment against this dimension of quality.

- **Consulted** – Chapter 4 of the *Regulatory Impact Analysis handbook* sets out the requirements for efficient and effective consultation. It is important that the RIS does not just state what consultation has been undertaken, but also explains the nature of any issues raised or views expressed by stakeholders, and how these have been taken into account in the development of the final proposal.

The final criterion – **clear** and **concise** – relates to the presentation of material in the RIS. Information should be succinct and in plain English, to enable decision-makers to easily understand the issues and trade-offs associated with the choices they are making. The RIS should also be sufficiently clear so the general public can understand the basis on which government decisions have been taken. It may be more helpful to present some information in tabular or diagrammatic form, and flexibility of presentation is permitted.

The disclosure statement

The purpose of the agency disclosure statement is to provide agency accountability for the quality of their policy advice and to allow the person responsible for preparing the RIS to explain any constraints they faced in undertaking this analysis (e.g. key gaps, assumptions, dependencies, caveats or uncertainties).

The reviewer should take the information in the disclosure statement into account when forming a QA opinion. The main issue this raises is to what extent any constraints identified should be considered a mitigating factor with respect to the quality of the analysis. Judgement will be required on a case-by-case basis, but in general, reviewers should consider whether the constraint is a genuine analytical constraint and whether it was reasonably possible to overcome it.

For instance, a genuine analytical constraint may exist when there are no existing data e.g. on the scale of the policy problem (and it is simply not possible to obtain or gather such data). In this case, the RIS should note the uncertainty and risks this raises, but the QA opinion can be subject to the constraint. Alternatively, the QA opinion may determine that the RIS does not meet the “convincing” criterion, but note that these deficiencies have been identified.

Another example is when the portfolio Minister has directed that analysis be undertaken only on particular policy options (and other feasible options are taken off the table prior to the preparation of the RIA/RIS). In this case, the reviewer may state whether the analysis is as good as could be expected in light of these constraints, but nonetheless only partially meets the quality assurance criteria. In such a situation, the agency’s disclosure statement should also identify the alternative options that they would have analysed, had they been able to consider the full set of feasible options.

Preparing a QA statement

The QA statement for the Cabinet paper needs to:

- State whether the RIA requirements have been met/partially met/not met; and
- Identify any issues raised by the reviewer in relation to any of the dimensions of quality specified in the QA criteria and guidance.

The purpose of this statement is to provide decision-makers with advice on the quality of the information in the RIS and the reliance they should place on the underlying analysis. It is not a comment on the efforts of the authoring agency.

In practice, judgement is required in deciding which category a RIS falls into (particularly when choosing between "meets" and "partially meets"; and between "partially meets" and "does not meet"). The reviewer needs to consider the context of the decisions being taken (e.g. whether they are in principle or final policy decisions) and any constraints that have been identified in the Agency Disclosure Statement that may compromise the quality of the analysis.

In general, we recommend that "does not meet" is used when RIS falls short of the standards on more than one aspect (e.g. several components of the required information are absent or of inadequate quality). "Partially meets" may be appropriate when the RIS meets the quality standards on most dimensions, but there is one particular area of deficiency that should be highlighted. Some illustrative examples are provided in Annex D: Illustrative QA statements.

The QA statement must use the term "meets", "partially meets" or "does not meet" the RIA requirements, because Cabinet Office will reflect this in the top sheet they prepare for the Cabinet paper.

There is no set format for the information in the second bullet point, as this will depend on the particular circumstances of the individual RIS. However, the statement should:

- Be succinct;
- Provide an indication as to the reliance that can be placed on the RIS, as a basis for informed decision-making;
- Relate the issues raised to the relevant QA criterion; and
- Explain any gaps between the analysis in the RIS and what they would have expected to see, and the implications or risks this poses. That is, what further analysis could or should have been undertaken, and/or what risk mitigation can be done (e.g. additional, targeted consultation).

Template statement

The overall opinion is to be included in the Cabinet paper under the heading *Quality of the Impact Analysis.* The statement will include the following:

> "[**Name of team or position of person completing opinion – either from authoring agency or RIAT**] has reviewed the Regulatory Impact Statement (RIS) prepared by [**name of agency**] and associated supporting material, and
>
> [*Statement on whether the reviewer considers that the information and analysis summarised in the RIS meets/does not meet/partially meets the quality assurance criteria]*
>
> [*Comment on any issues that have been identified in relation to any of the dimensions of quality specified in the quality assurance guidance*]."

Non-standard situations

Policy processes are often non-linear, and a wide variety of non-standard situations can arise. Reviewers may come under pressure to provide QA statements in a very short space of time, on non-final RISs, or on RISs that change rapidly (e.g. as policy options are altered by Ministers). Sometimes regulatory proposals will "by-pass" the RIA requirements altogether (by not having a RIS or by not being submitted to the appropriate QA process).

This guidance document does not attempt to cover all possible circumstances, and agencies will need to exercise judgement in many cases. RIAT is available to provide advice on a case-by-case basis, and share their experiences at dealing with similar situations.

Monitoring and review

It is important that the QA criteria are applied consistently across proposals and over time.

Moderation arrangements

There is a variety of moderation arrangements that can be put in place, such as:

- having centralised oversight of all QA assessments (e.g. the chair of the review panel);
- ensuring all QA is subject to peer review by others within the panel or pool of reviewers; or
- rotating QA responsibilities for types of proposals (i.e. particular policy areas) so that they are not always reviewed by the same person.

Evaluation and review

Periodic evaluations of QA assessments can provide a further check. One way of obtaining this is by having an independent party (such as a consultant) review a random sample of QA assessments.[4] To assist this process, agencies should maintain a register of RISs assessed and the outcomes of these assessments. Where a RIA panel has been established, this could be undertaken by the secretariat or a nominated panel member. An example template for this register is provided in Annex C. Keeping track of regulatory proposals in this way will also assist agencies in providing information requested by Treasury for their report backs to Cabinet on the operation of the regulatory management system and how the Government is meeting its regulatory commitments and any other reporting Treasury may undertake.

Critical success factors

- **Senior management buy-in and support** is essential to the credibility and effectiveness of a robust QA process.
- A **high-level of awareness** throughout the agency about the RIA requirements and the QA process is important in ensuring that all RISs obtain the required QA.
- Widespread understanding of the reviewer's role and the QA process is also needed. It is recommended that procedures and protocols around the operation of the QA process are **documented and communicated** across the agency.
- Having the **RIA framework embedded early** as part of the generic policy development process will help lift the quality of analysis more generally and enable the RIA requirements to be met.

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4 The inter-agency Regulatory Impact Analysis Reference Group (RIARG) has previously commissioned two such reviews, and may commission further reviews in the future. The most recent is available on Treasury's website at http://www.treasury.govt.nz/publications/guidance/regulatory/riareview.

Annex A: Quality assurance criteria

The following quality assurance dimensions draw on those used by NZIER in its reviews of departmental policy papers and RISs.

All four dimensions must be assessed by the people providing independent quality assurance of Regulatory Impact Statements. The associated questions, however, are indicative and do not purport to be exhaustive.

Dimensions
Complete • Is all the required information (including the disclosure statement) included in the RIS? • Are all substantive elements of each fully-developed option included (or does the RIS identify the nature of the additional policy work required)? • Have all substantive economic, social and environmental impacts been identified (and quantified where feasible)?
Reviewer's opinion:
Convincing • Are the status quo, problem definition and any cited evidence presented in an accurate and balanced way? • Do the objectives relate logically to, and fully cover, the problem definition? • Do the options offer a proportionate, well-targeted response to the problem? • Is the level and type of analysis provided commensurate with the size and complexity of the problem and the magnitude of the impacts and risks of the policy options? • Are the nature and robustness of the cited evidence commensurate with the size and complexity of the problem and the magnitude of the impacts and risks of the policy options? • Do the conclusions relate logically and consistently to the analysis of the options?
Reviewer's opinion:
Consulted • Does the RIS show evidence of efficient and effective consultation with all relevant stakeholders, key affected parties, government agencies and relevant experts? • Does the RIS show how any issues raised in consultation have been addressed or dealt with?
Reviewer's opinion:

Dimensions
Clear and concise • Is the material communicated in plain English, with minimal use of jargon and any technical terms explained? • Is the material structured in a way that is helpful to the reader? • Is the material concisely presented, with minimal duplication, appropriate use of tables and diagrams, and references to more detailed source material, to help manage the length?
Reviewer's opinion:

Overall opinion on quality of analysis

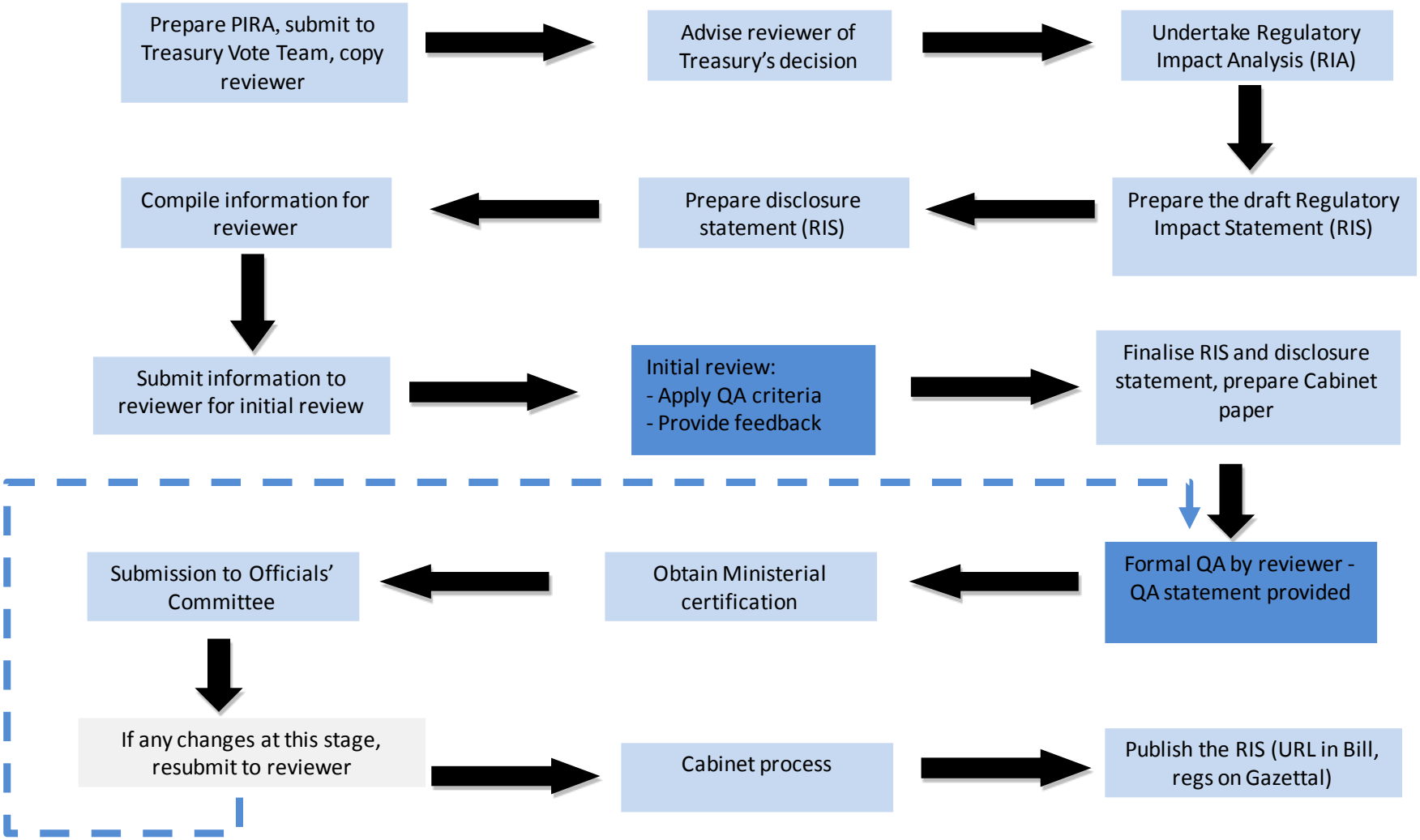
The overall opinion is to be included in the Cabinet paper under the heading *Quality of the Impact Analysis*

"[**Name of team or position of person completing opinion – either from authoring agency or RIAT**] has reviewed the Regulatory Impact Statement (RIS) prepared by [**name of agency**] and associated supporting material, and

[*Statement on whether the reviewer considers that the information and analysis summarised in the RIS meets/does not meet/partially meets the quality assurance criteria]*

[*Comment on any issues that have been identified in relation to any of the dimensions of quality specified in the quality assurance guidance*]."

Annex B: A possible process model



Annex C: Example template register of QA assessments

Name of proposal	Title of legislation or regulation introduced/amended/repealed	Portfolio (Vote)	Date of final assessment	Assessment	Issues identified in statement
				Meets/partially meets/does not meet	e.g. filepath or link or to Word document containing the statement
Design specifications and performance requirements for NZ-built spaceships	Space Race Act 2010	Innovation	1/4/10	Partially meets	Consultation requirements not met as no public consultation on specific proposals iManage 111999

Annex D: Illustrative QA statements

Partially meets

"The Manager, Regulatory Standards in the Ministry of Innovation has reviewed the RIS prepared by the Ministry of Innovation and associated supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.

In light of the constraints on the policy development process that are identified in the Agency Disclosure Statement, the reviewer considers that the information in the RIS is as complete as could be expected and identifies the main risks and uncertainties. However the RIS does not provide evidence of the stated problem or convincing argumentation for the preferred option, so the need for the proposed regulation is not clear."

"The Ministry of Innovation's independent RIS review panel has reviewed the RIS prepared jointly by the Ministry of Innovation and the Department of Ideas, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria. While the analysis is largely complete, the RIA consultation requirements have not been met as there has not been public consultation on the specific proposals set out in the RIS."

"The Chief Advisor, Information Quality in the Ministry of Innovation has reviewed the RIS prepared by the Ministry of Innovation and associated supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria. The information in the RIS is as complete as could be expected given the timeframes for policy development. However, while the risks of the preferred option have been identified, ideally analysis on the nature of these risks (including how they would manifest) and how they can be addressed or managed, would be undertaken before decisions are taken."

Does not meet

"The Ministry of Innovation's RIS review panel has reviewed the RIS prepared by the Ministry of Innovation and considers that the information and analysis summarised in the RIS does not meet the quality assurance criteria, for the following reasons:

- The RIS does not identify or assess of the full range of feasible options, including non-regulatory options;
- The options identified in the RIS are not assessed against the stated objectives; and
- There has been no consultation with affected stakeholders."

"The Manager, Standards and Compliance has reviewed the RIS prepared by the Ministry of Innovation and considers that the information and analysis summarised in the RIS does not meet the quality assurance criteria, for the following reasons:

- The RIS provides no evidence of the stated problem;
- The RIS provides no information on how the proposals will be implemented, including how detailed regulatory design choices may influence the overall effectiveness of the changes."