

# Regulatory Impact Analysis Handbook

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**THE TREASURY**

Kaitohutohu Kaupapa Rawa

**New Zealand Government**

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# A quick guide to Cabinet’s Regulatory Impact Analysis (RIA) requirements

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|--|---|
| <p><b>1. Determine whether the RIA requirements could apply</b></p>    | <p>Are you embarking on policy work with potential regulatory implications that will lead to submission of a Cabinet paper? “Potential regulatory implications” means it includes options that involve creating, amending or repealing primary legislation or regulations.</p> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <div style="border: 1px solid #ccc; padding: 5px; width: 45%;"> <p>If potential regulatory implications, complete <a href="#">Preliminary Impact and Risk Assessment</a></p> </div> <div style="border: 1px solid #ccc; padding: 5px; width: 45%;"> <p>If no potential regulatory implications, RIA requirements do not apply but RIA framework still provides a useful basis for analysis</p> </div> </div>                   |
| <p><b>2. Prepare Preliminary Impact and Risk Assessment (PIRA)</b></p> | <p>Discuss PIRA with Treasury policy team as early as possible, to confirm whether the RIA requirements apply and whether any resulting regulatory proposal is likely to have a significant impact or risk.</p> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <div style="border: 1px solid #ccc; padding: 5px; width: 45%;"> <p>If Treasury confirms that no significant impact or risk likely, then the agency will be responsible for quality assurance</p> </div> <div style="border: 1px solid #ccc; padding: 5px; width: 45%;"> <p>If Treasury confirms that there is likely to be <a href="#">significant impact or risk</a>, Regulatory Impact Analysis Team (RIAT) involvement is required. Early engagement with RIAT is needed</p> </div> </div> |
| <p><b>3. Undertake regulatory impact analysis</b></p>                  | <p>Apply the RIA framework to your policy work right from the start of the policy development process</p>   |
| <p><b>4. Prepare the Regulatory Impact Statement (RIS)</b></p>         | <p>The RIS is to be prepared before the Cabinet paper. It provides a summary of the impact analysis for decision-makers and must include all the <a href="#">required information</a></p>   |
| <p><b>5. Complete disclosure statement</b></p>                         | <p>The person with responsibility for producing the RIS is required to complete and sign a <a href="#">disclosure statement</a>, to be attached to the front of the RIS</p>   |
| <p><b>6. Obtain independent quality assurance</b></p>                  | <p><a href="#">Independent quality assurance</a> is to be provided either by RIAT or through a suitable internal review process. A <a href="#">quality assurance statement</a> is to be provided in the Cabinet paper</p>   |
| <p><b>7. Prepare Cabinet paper</b></p>                                 | <p>The Cabinet paper focuses on the Minister’s proposal. It may refer to the RIS, which is appended to the Cabinet paper</p>  |
| <p><b>8. Obtain Ministerial certification</b></p>                      | <p>The Minister is required to <a href="#">certify</a> in the Cabinet paper whether the proposal is consistent with the expectations in the <a href="#">Government Statement on Regulation</a></p>  |
| <p><b>9. Publish the RIS</b></p>                                       | <p>All RISs must be <a href="#">published</a> on the agency and Treasury websites. The URLs to published RISs must be included in the Explanatory Note to Bills, but with hard copies also provided to the House if a Bill is introduced under urgency</p>  |
| <p><b>10. If RIA requirements not met</b></p>                          | <p>All “significant” regulatory proposals that do not meet the RIA requirements will undergo a <a href="#">post-implementation review</a></p>   |

# About this handbook

This handbook provides an overview of Regulatory Impact Analysis (RIA) and guidance on the main elements of Cabinet's RIA requirements. It incorporates Cabinet's decisions on changes to the RIA requirements taken during 2009, which came into effect on 2 November 2009.

The handbook supports and supplements the information provided in the [CabGuide](#) and in Cabinet Office Circular CO 09/8. It replaces the *Guidelines on the Regulatory Impact Analysis Requirements* published by the Treasury in November 2008.

There is a separate section for each of the main elements of the RIA requirements. These sections provide links to any templates and to further reference material.

## The limits of a handbook

It is not possible to provide practical and succinct guidance that fully addresses the issues raised by the huge variety of regulatory proposals that get developed or policy situations that may be encountered. We also acknowledge that developing effective legislation is a complex undertaking and that the realities of the policy development process can be far from ideal. Consequently, there will be times when agencies will need to exercise their own intelligent judgement about how best to give effect to the *intent* of the RIA requirements in the particular circumstances they find themselves in. The Regulatory Impact Analysis Team (RIAT) in the Treasury is also available to help answer questions that agencies may have.

## Keeping the handbook updated online

This handbook will be updated periodically online, in order to keep it accurate and as helpful as possible. This version of the handbook was last updated on **2 November 2009**.

To ensure you have the latest version please access or download the online handbook at: <http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis>.

## Your feedback welcome

We welcome your feedback on this handbook, including suggestions for possible additions or improvements. We would also like examples of good practice that can be shared with other agencies. Any comments or suggestions can be sent to [ria@treasury.govt.nz](mailto:ria@treasury.govt.nz).

# 1 When do the RIA requirements apply?

The Regulatory Impact Analysis requirements apply to any policy initiative or review that:

- considers options that would involve creating, amending or repealing either primary legislation (via a government Bill or government support for a member's Bill), or delegated legislation that is a regulation for the purposes of the [Regulations \(Disallowance\) Act 1989](#), and
- is expected to result in a paper being submitted to Cabinet<sup>1</sup>.

This includes papers submitted to Cabinet seeking:

- the release of a [discussion document](#) that contains options that may lead to legislative or regulatory change
- [“in principle” policy decisions and intermediate policy decisions](#), particularly those where policy options are narrowed down (eg, limiting options for further work/consideration)
- decisions to introduce legislative or regulatory changes that are merely enabling and the substantive decisions as to whether and what sort of intervention will be made later, and
- to inform Cabinet of a Minister's intention to make regulations under an enabling power given to that Minister in an Act.

Policy proposals with regulatory implications are normally submitted to Cabinet Committees for policy approval before legislation or regulations are drafted. In rare circumstances, the policy proposal and draft regulations may be submitted together. In these cases, the usual procedure is for the paper to be submitted to the relevant Cabinet Committee, rather than directly to Cabinet Legislation Committee (LEG).

## 1.1 Exemptions

The value of completing even a modest Regulatory Impact Statement (RIS) is likely to be limited in some circumstances, such as those where the potential proposals would result in little or no change to the status quo legislative position or would have no or very small impacts outside of government. Consequently, the RIA requirements do not apply to those aspects of proposals that:

- are technical “revisions” or consolidations that substantially re-enact the current law in order to improve legislative clarity or navigability (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies)
- are suitable for inclusion in a Statutes Amendment Bill (if not already covered by the first bullet point)
- would repeal or remove redundant legislative provisions

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<sup>1</sup> The RIA framework provides a useful basis for any policy development process, not just those that may consider regulatory options or result in a Cabinet paper. However, the RIA requirements are formally triggered by a submission to Cabinet.

- provide solely for the commencement of existing legislation or legislative provisions
- need to be authorised in an Appropriation Bill, an Imprest Supply Bill, or a Subordinate Legislation Confirmation and Validation Bill
- implement Deeds of Settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements
- are essential (the minimum necessary) in order to comply with **existing** international obligations that are binding on New Zealand, or
- have no or only minor impacts on businesses, individuals or not-for-profit entities (such as might be the case for certain changes to the internal administrative or governance arrangements of the New Zealand government, like the transfer of responsibilities, staff or assets between government agencies).

## 1.2 Discussion documents

The RIA requirements apply to discussion documents that include consideration of options with potential regulatory implications. It is usually most effective to incorporate the RIA elements within the body of the discussion document. This involves:

- **Structuring the document around the RIA framework:** explaining the current situation and the nature and size of the problem; setting out the policy objectives; identifying the range of feasible options, and providing preliminary analysis of the costs, benefits and risks of these options, and an indication as to how they will be implemented. The document may indicate a preferred option.
- **Including suitable questions** for stakeholders, that will prompt respondents to confirm and challenge the analysis, provide feedback on the assumptions, estimated magnitude of impacts etc and suggest additional options.

Other features of good consultation are summarised in the section on [Consultation](#), and should be incorporated into discussion documents. For example, the purpose and scope of consultation should be made clear (explaining what is “on the table” and the nature of any decisions that have already been taken), and any assumptions made explicit.

## 1.3 Supplementary Order Papers

From time to time, policy changes may be made to draft legislation that are outside the scope of the original RIS. When these changes are sought through a Supplementary Order Paper (SOP) that is submitted to Cabinet, the original RIS must be updated (or a new RIS prepared) to indicate how the changes affect the impact analysis (eg, how they alter the nature and/or magnitude of the impacts).

## 1.4 International treaties

In some cases, there may be legislative or regulatory implications that arise as a result of the completion and implementation of an international treaty. The RIA requirements apply to any proposals that may lead to a paper being submitted to Cabinet, which, in the case of international treaties, may include papers seeking Cabinet approval to enter into negotiations (ie, a negotiating mandate), to sign the final text of a treaty, or for a treaty to enter into force for New Zealand.

In accordance with the Cabinet Manual and Standing Orders 388-391, all multilateral treaties or “major bilateral treaties of particular significance” concluded by New Zealand require the preparation of a National Interest Analysis (NIA). When preparing a NIA for a treaty with regulatory impacts, the Ministry of Foreign Affairs (MFAT) adheres to NIA drafting guidelines produced in collaboration with the RIAT. Those guidelines require that, for treaties with regulatory impacts, the NIA also includes all the requirements otherwise considered in a RIS (becoming an “extended NIA”). A separate, standalone RIS is therefore not required when an extended NIA is prepared.

The International Treaty Making booklet, which includes the NIA drafting instructions, can be found at the following link: <http://dev.mfat.govt.nz/Treaties-and-International-Law/03-Treaty-making-process/index.php>. For any questions regarding international treaties and arrangements, please contact the Treaty Officer in the Legal Division of the Ministry of Foreign Affairs and Trade ([treatyofficer@mfat.govt.nz](mailto:treatyofficer@mfat.govt.nz)).

# 2 Undertaking Regulatory Impact Analysis

## 2.1 The purpose of RIA

The government wants to ensure that proposals involving regulatory options are subject to careful and robust RIA to ensure that the problem cannot be adequately addressed through private or non-regulatory arrangements and that a regulatory solution is required in the public interest.

The government's RIA framework encourages an evidence-based approach to policy development which helps ensure that all practical options for addressing the problem have been considered and the benefits of the preferred option not only exceed the costs but will deliver the highest level of net benefit.

This means providing references and sources for assertions made (such as about the nature of the problem and about the expected viability or effectiveness of policy options), and for all estimates of costs, benefits and risks. Evidence may be quantitative or it may be qualitative; in each case the strengths, biases and limitations of the information sources should be explained. Where there are information gaps, for instance where there are no data available to support the analysis, this should be explicitly stated.

When considering the impacts of the status quo and of the alternative options, it is important to consider these impacts from the perspectives of the various affected parties. Put yourself in the position of the individuals and groups that will be affected, eg, farmers, shoppers, road-users.

## 2.2 Levels of analysis

Generally speaking, the level of analysis undertaken (detail and depth) should be commensurate with the magnitude of the problem and the size of the potential impacts of the options being considered. There is often judgment required to determine how much analysis is appropriate in particular circumstances and the Regulatory Impact Analysis Team (RIAT) can provide advice on this.

Sometimes it is appropriate to narrow down the initial range of options, and undertake comprehensive analysis on a more limited set of options, as this enables analytical resources to be focused on those options most likely to deliver net benefits<sup>2</sup>. In these circumstances, the objectives against which the full range of options was assessed should be explained, and the way they were applied made explicit (eg, if any objectives were weighted more highly than others). An example of this process is where a multi-criteria analysis<sup>3</sup> is employed to narrow down the set of options subject to full cost benefit analysis. Initial options may also be narrowed down through early consultation processes.

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<sup>2</sup> If there is a preferred option, the greatest effort should go towards analysing this, and the second-most preferred option.

<sup>3</sup> Multi-criteria analysis is a way of appraising and ranking policy options against a given set of objectives or criteria. It is less rigorous than cost benefit analysis but is more flexible and relatively easy to implement since it can be used to assess and compare options that involve both monetary and non-monetary impacts.

## 2.3 Describe the status quo

RIA involves assessing one or more policy options against the situation expected to occur in the absence of any **further** government action or decisions (the status quo). The status quo includes any existing legislation/regulations, or other relevant government interventions or programmes that are in place. Any relevant decisions that have already been taken should also be taken into account, including decisions that have been agreed by Cabinet but for which the legislation has not yet been passed.

The description of the status quo should also include consideration of the relevant prevailing market conditions. This may include expected demand and supply trends, and other features or characteristics of the market such as relevant market participants (eg, identifying who are the producers, suppliers, retailers, consumers, regulators). If there are non-regulatory, self-regulatory, or co-regulatory arrangements in place, these also form part of the status quo.

## 2.4 Identify the nature and scale of the problem

For the purposes of RIA, a “problem” is when the outcomes expected under the status quo are worse, from society’s point of view, than they would be if action were taken to improve matters. It is the difference between how things will be and how we would like them to be.

Having *described* the status quo, the next task is then to assess the nature and size of the problem associated with the expected outcomes in the absence of any further government action. This involves identifying and quantifying (to the extent possible) the *costs and benefits* of the current arrangements, including:

- the nature and probability of the adverse outcome/s that will arise in the absence of further government intervention (in addition to the interventions already in place), and
- who is likely to be affected by the adverse outcome, including how widespread it is likely to be (ie, how many individuals, groups, firms etc. are affected), what harm or injury is likely to occur, and the magnitude of these impacts.

This quantification should include aggregate figures (totals) to help put the issue in a wider perspective. The next step is to identify the **root cause** of the problem (not just the symptoms), for example market failure, regulatory failure, unacceptable hazard or risks, social goals/equity issues. The reason why the problem will not be addressed within existing arrangements or by private arrangements (such as individual contracts, market forces etc.) should be explained. If the problem relates to existing legislation or regulation, it should be made clear whether the problem is in relation to its **design** (and) or its **implementation**.

In practice, the status quo and problem may be inter-related and considered or discussed together. However, the key elements of both should be addressed.

## 2.5 Define the objectives

Describe the objectives, outcomes, goals or targets that are sought in relation to the identified problem. If there is an authoritative or statutory basis for undertaking the analysis eg, legislative requirement to annually review an item of regulation, this should be explained.

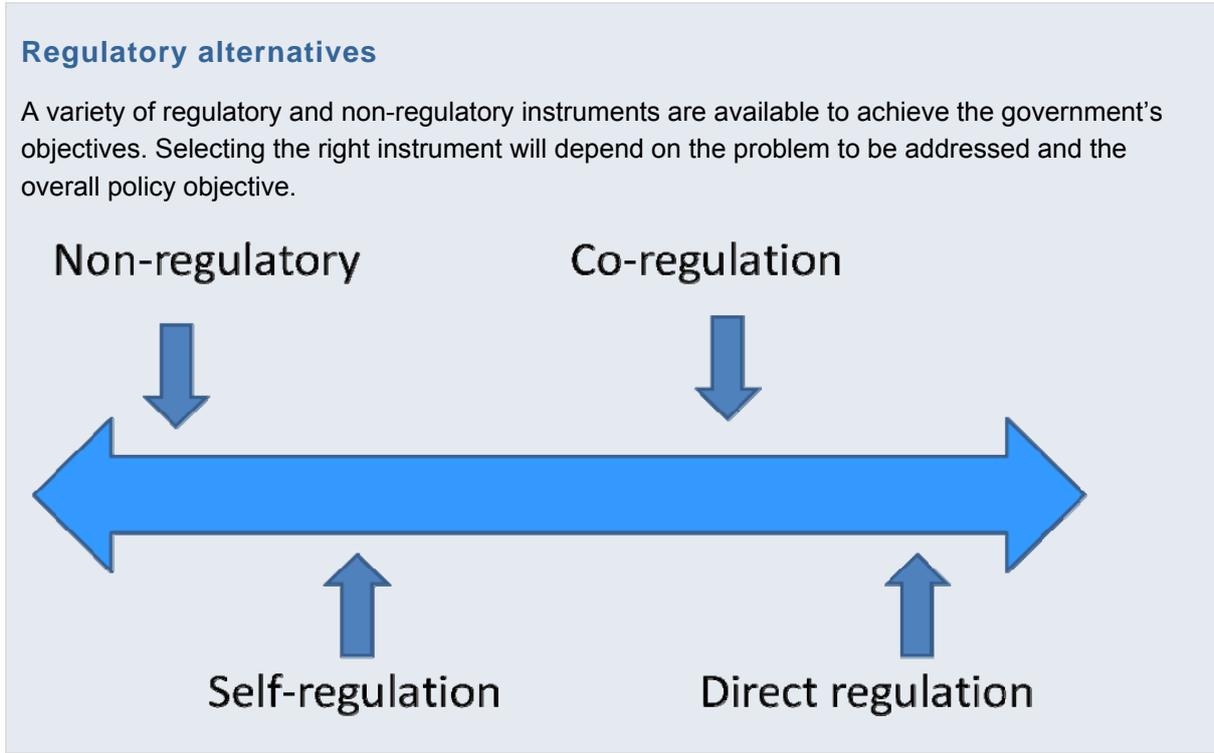
The objectives should be clear and should not pre-justify a particular solution. They should be specified broadly enough to allow consideration of all relevant alternative solutions. It may be appropriate to distinguish between primary and subsidiary objectives. The objectives should focus on the desired final outcome rather than the means of achieving it.

If the outcomes are subject to constraints, for example if they must be achieved within a certain time period or budget, then these should be clearly specified in the statement of objectives.

There may be more than one policy objective, and there may be potential for conflict between objectives. If this is the case, it should be clear how trade-offs between competing objectives are going to be made (for example if one objective is weighted more highly than another).

## 2.6 Identify the full range of feasible options

Identify the full range of policy options that may fully or partially achieve the stated objectives and thereby address the identified problem.<sup>4</sup> This should include, where relevant, both regulatory and non-regulatory options. Within regulatory options, a representative and pertinent spectrum of viable regulatory forms should be considered. New regulation should not conflict with or duplicate existing legislation or regulations. It is therefore important to consider how a regulatory option will interact with the stock of regulation, including whether there is scope to reduce or remove any existing regulations.



<sup>4</sup> This means the “full range of policy options within reason”. It is neither necessary nor possible to analyse every combination and permutation of policy options.

Non-regulatory options include education campaigns and subsidies. These options seek to influence individual preferences but do not guarantee that changes in behaviour will occur. Examples include:

- the drink driving advertising campaign that seeks to reduce drink driving rates, and
- the Warm-up New Zealand home insulation subsidies that seeks to encourage home insulation improvements.

Self-regulation options can be used where a group can exert control over its membership, for example an industry body regulating its members. This can include standards used by industry members, for example the Advertising Standards Authority's *Code for Advertising to Children*, or establish a consumer complaints mechanism, for example the Insurance and Savings Ombudsman.

Regulatory options can also seek to influence behaviour, such as making information disclosure mandatory (eg, nutritional information on food packaging). This does not require consumers to make healthy food decisions but provides more information to assist their decision making.

The government may also use co-regulatory options, which combine elements of self-regulation and government regulation. Co-regulation involves government oversight or ratification of self-regulatory instruments. For example, the New Zealand Stock Exchange (industry body) regulates the activities of the stock market and is overseen by the Securities Commission (government regulator).

Alternatively, the government can directly control outcomes through regulation. For example, occupational licensing could be introduced where only licensed individuals are able to perform particular tasks, such as builders. Or, individuals could be required to be licensed before they are able to work in a particular profession, such as working as a physiotherapist.

Mandatory standards and codes could be introduced to control the outcome or process used. Performance based standards and codes specify the outcome that is to be achieved. In contrast, prescriptive-based standards and codes specify the technical detail around how the outcome is to be achieved. For example, if the government wished to improve vehicle safety it could introduce a standard that drivers must have a 90% survival rate in a head on crash at 50 km/h (performance based). Alternatively, the standard could require that cars have seatbelts and front and side airbags (prescriptive-based).

The government can also regulate directly by prohibiting certain conduct or actions. Drink driving offences are an example of this, where driving with over 80 milligrams of alcohol for every 100mls of blood is prohibited.

In many cases, there will not be one answer and a number of instruments used in conjunction may be the most effective way of addressing the problem. For example, education campaigns can be used to increase compliance with legal requirements such as the blood alcohol limits while driving.

## 2.7 Analyse the options

Having identified the full range of feasible options, the next step is to analyse the costs, benefits and risks of each option. The analysis needs to show how each option would incrementally alter the status quo.

### 2.7.1 Identify the full range of impacts

This stage involves identifying the full range of impacts, and providing a qualitative description or explanation. Impacts can be positive or negative (ie, include both costs and benefits), and include economic, fiscal, compliance, social, environmental and cultural impacts. They include both direct and indirect (flow-on) effects; one-off and recurring or on-going impacts.

### 2.7.2 Quantify to the extent possible

Impacts should be quantified, and expressed in dollar terms (monetised) to the extent practical. This requires determining the number of individuals, firms or groups affected, the size of the impact on each of these, and the total impacts (ie, number affected \* size of impact). Quantification helps examine the costs of regulation and tests the assumptions and judgements involved in the formulation of policy advice. Monetisation enables comparison of options against each other and, by providing a common analytical denominator it helps avoid double-counting costs and benefits.

Quantification and monetisation is not always possible. In these cases, the costs and benefits should be described as best as possible, drawing on any available qualitative evidence. Dollar figures should not be “invented” for their own sake.

All assessments of costs and benefits whether quantitative or qualitative, should be based on evidence, with data sources and assumptions clearly identified. If, for example, qualitative benefits are considered to outweigh monetised costs, the basis for this judgement should be explained. The **net** benefit (or cost) of each option should also be assessed.<sup>5</sup>

Detailed guidance on undertaking cost benefit analysis is provided in Treasury's [Cost Benefit Analysis Primer](#).

### 2.7.3 Analyse the incidence of impacts

The incidence of the impacts of each option also needs to be assessed, that is, who bears the costs and benefits. The different types of people and groups relevant to the analysis will vary depending on the options being considered. They may include:

- individuals, families and/or households
- consumers
- employees
- businesses
- people who live in particular regions
- members of particular groups of the population (ie, ethnicities, genders, age groups etc)
- users of resources eg, recreational fishers, road-users

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<sup>5</sup> Put simply, net benefit (or cost) is the difference between total costs and total benefits. The “net present value” is the sum of discounted net cashflows, ie, the present value of costs less the present value of benefits. These concepts and how to calculate them are explained in detail in Treasury's *Cost benefit analysis primer*.

- not-for-profit organisations (including charities, voluntary organisations and incorporated societies)
- local government, and/or
- central government agencies.

It may be necessary to further distinguish within these groups (eg, within businesses by firm size or industry sector). The proportionate incidence of costs may be of particular relevance, eg, the impact on small businesses compared to total/average firms. The redistributive effects on income or wealth may also be of concern.

#### 2.7.4 Risk assessment

The risks associated with each option should be identified and assessed. Some important types of risks to consider are set out in the [Preliminary Impact and Risk Assessment](#) template.

Any weighting of risks should be made explicit. That is, it should be made clear how trade-offs have been made (eg, between a high-risk/low cost option, and a low-risk/high cost option). It may be relevant to assess the probability of a particular risk occurring against the likely magnitude of its impact if it does occur (ie, probability of risk occurring \* size of impact of risk).

For the purposes of RIA (as opposed to general policy advice) the risks are from society's point of view. That is, risk is the probability that the outcomes of the options considered will be better or worse than the expected outcomes under the status quo. It might not be possible to estimate this probability with much degree of reliability. That is, there may be instances of true uncertainty. In that case, a risk analysis should assess the worst-case and best-case scenario, and comment on the likelihood of these extreme events.

#### 2.7.5 Summarising the results

There are various ways of summarising and presenting the outcomes of options analysis. Summary information to convey includes:

- For each option, a **summary of the main costs, benefits and risks** and overall (net) impacts, in relation to the status quo. This should include aggregates (eg, economy-wide totals).
- Key **assumptions underlying estimates of net benefits**. For example, the assumptions around expected compliance rates.

### 2.8 Implementation

Choices around the implementation and enforcement of a regulatory option can have a major influence on expected compliance rates and whether the expected costs and benefits will materialise (ie, the likely effectiveness of the regulation). Sometimes a lot of costs can be incurred during the implementation stage (such as the costs of monitoring and data collection) so key parameters should be included in the analysis of the costs and benefits of options.

The appropriate level of analysis of implementation will depend on the stage of the policy development process. However, it is important to consider some practical implementation issues before key policy and design choices are taken. These include:

- **Administration** issues, such as which agency will administer the option and how it will function.
- The **information** that regulated parties will require in order to comply with the regulation, and how this will be provided (eg, whether there is opportunity to rationalise or “piggyback” on existing information sources/methods of communication).
- **Timing and transitional arrangements** eg, delayed or gradual introduction of new requirements, provision of interim assistance.
- **Enforcement strategy** – how compliance will be enforced, who will undertake this, whether there will be sanctions for non-compliance (eg, warnings, fines, licence suspension, prosecution, and whether there will be gradations of sanction depending on the level/severity of breach), the suitability of risk-based enforcement strategies.

The impact of different choices around enforcement strategy on costs and benefits (expected compliance and hence effectiveness of the option) should be included in the options analysis. Consideration should also be given as to how these enforcement costs will be funded.

### 2.8.1 Minimising compliance costs

The compliance costs of each option will have been assessed during the course of the impact analysis. Consideration should be given to ways in which compliance costs may be reduced or minimised. There may be trade-offs between compliance costs and the administrative costs to government, and these should be explicitly identified (eg, greater flexibility in the ways business can comply with the regulatory requirements may minimise costs to firms, but may increase the costs of administering the regulation). Information on business compliance costs is provided on [MED's website](#).

### 2.8.2 Implementation risk assessment

Key implementation risks and their potential impact on the effectiveness of an option should be identified. Strategies for mitigating these risks should be explained.

#### The importance of implementation

The prevailing view has been that the implementation of legislation is “something that regulators do”, once the law is passed. This view is changing, as we increasingly recognise that how regulation works in practice has as much to do with factors that influence implementation as the law itself, and these factors can and should be taken into account in the policy development process and regulatory impact analysis.

There are two distinct phases to implementation:

- the initial phase when a new law is introduced, and
- the ongoing administration and review of the law.

The initial phase has distinct characteristics as it is at this point that historical behaviours are required to change in line with the expectations underlying the law. Behaviours are a function of both attitudes and capabilities. In addition, it is often the case that the behaviours of more than one group need to change. Experience suggests that the behaviours that must change to achieve the objectives of the law are often path dependent and can be deeply embedded, and we typically under-estimate the effort required to effect change. Therefore, we need to allow sufficient time for implementation, to adopt appropriate strategies to facilitate and manage the change process, and undertake sufficient ongoing monitoring and evaluation.

The questions that should be asked at the outset include:

- What groups will be affected by this law (this will bear on the analysis of the status quo; key groups include producers, consumers, regulators, standards bodies etc)?
- What behaviours would we expect these groups to demonstrate if the law is to achieve its intended objectives? Bear in mind that actors respond to their “complete” regulatory environment, which may involve other areas of regulation and legislation than the policy question at hand.
- What might act as a barrier to behavioural change? Put yourself in the shoes of the affected parties – what incentives are in place to influence their behaviours?
- What strategies are likely to work best during the implementation phase to reduce these barriers? This will include consideration of appropriate transition arrangements.
- What monitoring and evaluation strategy is required to identify and address emerging issues that are affecting the effective implementation of the law?

When considering the factors that influence the administration of the law on an ongoing basis, it is important to note that interventions that do not deliver on their intended objectives may reflect poor strategy choice by the regulator rather than the rules themselves. There are two key factors to consider in the analysis.

First, regulators are always in the situation of allocating limited resources. In effect they must make hard choices about where to invest their regulatory capability. Risk-based frameworks are most commonly used today to make resource allocation decisions. In effect these require regulators to make an assessment of the likelihood and consequences of certain adverse events happening, relative to the cost of mitigating them, and use this information to prioritise activity. Dealing with uncertainty is an important dimension of risk-based regulatory action. The second factor is that regulated entities are not homogenous, and a strategy that works best for one group may not be effective or necessary for another.

Given these two factors, in addition to revisiting the factors and question outlined above, the questions we should also ask at the outset include:

- Does the proposed law permit risk-based decision making by the regulator?
- Can we be assured that the regulator will take a risk-based approach?
- Does the regulator have the statutory tools to take a “fit for purpose” approach to enforcement?
- Can we be assured that the regulator will take a “fit for purpose” approach?

## 2.9 Monitoring, evaluation and review

It is important that new policies (including regulation) are monitored and evaluated, to ensure they are working as expected (delivering the anticipated benefits at expected costs), that there have been no unforeseen consequences and they continue to be necessary as circumstances change and evolve.

When new regulatory options are being proposed, it is important to have a clear understanding of the channels through which the intervention will generate the intended benefits. Analysis needs to consider how effectiveness will be measured: what indicators will be used; what data will be required; how this information will be collected and by whom. As noted above, monitoring and evaluation involves costs, which should be factored in to the analysis of options.

On-going or periodic consultation with stakeholders may be appropriate, in which case the arrangements for this should be agreed. It may be appropriate to establish a feedback mechanism (eg, a way for stakeholders to ask questions or lodge complaints). Regular, public reporting on the effectiveness of the regulation may also be considered.

Plans should be made for how and when the regulation will be reviewed, and reviews should consider the following issues:

- Is there still a problem (and is it the one originally identified)?
- Are the objectives being met?
- Are the impacts as expected? Are there any unforeseen problems? Are there any indirect effects that were not anticipated?
- Is intervention still required? Is the current intervention still the most appropriate, or would another measure be more suitable?

# 3 Preliminary impact and risk assessment

## 3.1 What is a PIRA?

A preliminary impact and risk assessment (PIRA) is intended to:

- help agencies determine whether Cabinet’s RIA requirements apply to a policy initiative for which they are responsible
- help agencies identify the potential range of impacts and risks that might be presented by the regulatory options for a policy initiative or review, in order that these can be appropriately addressed in the regulatory impact analysis undertaken
- help Treasury policy teams determine the level and sort of policy engagement they wish to have with the lead agency on the initiative, and
- help Treasury confirm whether the nature and size of the potential impacts and risks warrant RIAT involvement in providing independent assurance on the quality of the RIS.

## 3.2 The significance criteria

A regulatory initiative is considered to trigger the significance criteria if the option/s being considered are likely to have:

- significant direct impacts or flow-on effects on New Zealand society, the economy, or the environment or
- significant policy risks, implementation risks or uncertainty.

More detail on the types of impacts and risks to be considered is set out in the [PIRA template](#).

## 3.3 Process for completing the PIRA

The PIRA should be completed by the person with responsibility for the completion of the work or development of the proposal.

It should be started as early as possible in the policy process and provided to your Treasury policy team as soon as you think it contains enough information to help Treasury make a call about the significance of the initiative and therefore whether referral to RIAT is required. This may not require definitive answers to all questions.

## 3.4 If RIAT involvement is required

If RIAT involvement is required, the next step is to engage with RIAT to determine the nature of their involvement in the policy development process.

RIAT is an independent unit located within the Treasury. Its role is to:

- provide [quality assurance](#) of the RIS for regulatory proposals likely to have a significant impact or risk
- provide general advice on the RIA requirements, and

- help build capability across government to undertake high quality impact analysis. This includes providing guidance and training, for example on appropriate analytical techniques such as cost benefit analysis.

The nature of RIAT's involvement in significant proposals will depend on the characteristics of the proposal and the policy development process, as well as the existing capabilities and internal quality assurance processes of the lead agency. It may involve:

- working alongside agencies to assist them in meeting the RIA requirements, such as by providing comments on draft discussion documents and draft terms of reference for major pieces of work (eg, cost benefit analyses)
- providing independent [quality assurance](#) of the RIS, and/or
- referring proposals to other departments, agencies or specialists who have relevant expertise in regulatory quality issues or the subject matter.

RIAT has the discretion to allow an agency to retain responsibility, on a case by case basis, for providing assurance of the quality of their RIS even where the impacts or risks are viewed as significant. 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 (eg, 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.

The decision to allow an agency to undertake its own quality assurance of a significant proposal is not necessarily final. The conditions on which the decision is made will be set out and agreed with the agency. If any of the conditions change (eg, timeframes become compressed or additional policy options are included) then the agency must advise RIAT and the decision will be reviewed.

## 4 Consultation

Guidance on undertaking efficient and effective consultation is provided in the box below. In addition to consultation with affected parties, a number of government agencies may need to be consulted, depending on the nature of the option or proposal:

- The **Ministry of Economic Development** (MED) should be consulted on proposals that may impact on businesses, particularly those that impose compliance costs and direct costs.
- The **Ministry of Foreign Affairs and Trade** (MFAT) has certain obligations with respect to ensuring New Zealand's compliance with international agreements to which we are a Party. It is therefore important to consult MFAT where a regulatory proposal could affect New Zealand's international obligations.

These obligations include the Agreements of the World Trade Organisation (WTO), Closer Economic Relations (CER), free trade agreements, etc. Where a proposed regulation affects, or may affect traded goods and services, or foreign investment, the advice of the Ministry should be sought on whether the proposed regulation is consistent with these obligations. Even where proposed regulation is consistent, there may be an obligation to notify an international organisation or a trading partner of the proposed measures and allow them to comment. The usual timeframe for comments is 60 days.

- In addition, the **Treasury** policy team should be consulted on the development of all regulatory proposals.
- Requirements for consultation with other government agencies are set out in the [CabGuide](#).

The draft RIS provides a useful basis for consultation, both with affected parties and with government agencies. It also provides a useful vehicle for providing advice to the portfolio Minister, during the course of policy development.

The draft RIS should be circulated for comment to relevant government agencies. Ideally, this should be done before the Cabinet paper is prepared. Otherwise it must be circulated with the draft Cabinet paper. It must also be included with draft Cabinet papers when they are submitted to Officials' Committees.

## Efficient and effective consultation

The purpose of consultation is two-fold: to gain information to assist with policy development; and to inform stakeholders about what's happening.

### The value of consultation

Undertaking consultation during the policy development process can result in better quality regulatory proposals that are more likely to achieve their objectives. Having a consultation process acknowledges that those who are going to be affected by regulation may have access to more and better information about the real world impacts of proposals than the government officials who are developing them. This information can be critical to developing regulatory proposals that maximise the benefits, minimise the costs and avoid unintended consequences. Consultation therefore provides an important safeguard against regulatory failure.

The practical benefits of consultation include:

- better information, contributing to better quality regulatory proposals
- increased scrutiny of officials' analysis and advice, allowing potential problems with a proposal to be identified early
- durability as better designed policies are less likely to need amendments once introduced
- increased public buy-in/acceptance as stakeholders are more likely to accept a proposal they have been involved in developing, and
- improved understanding and increased compliance (therefore improved regulatory effectiveness).

### Costs and risks

While there are a number of benefits from consultation, there is also a risk that the consultation process will not achieve the desired outcomes. Policy makers need to consider who they are consulting and what they are consulting on to ensure that the process is effective and efficient.

Poorly designed consultation can be time consuming (both for stakeholders and officials) and fail to improve the policy design. Over-consulting stakeholders creates a risk of consultation fatigue where stakeholders are disinclined to be involved in future consultation processes. If the consultation process is poorly targeted or vague, the feedback received from stakeholders is unlikely to significantly improve policy.

### Timing

The benefits from consultation arise throughout the policy process: from correctly identifying the nature and source of the problem and identifying feasible alternative options and the associated costs, benefits and risks; through to practical design and implementation issues. When designing policy, it is important to ensure that the policy addresses the source of the problem rather than the symptoms and is correctly targeted, to avoid "over-regulation". Stakeholders often have better access to empirical information on the size of problem as well as day-to-day experience with the nature of the real issues. In addition, stakeholders' practical experience can help identify potential unintended effects that policy makers have not considered. Stakeholders may also suggest more practical solutions to achieve the policy objectives.

As consultation can add value at all the various stages of analysis, it is important that for it to be considered and planned for at the very outset of the policy development process. Undertaking consultation late in the process limits the benefits that can be gained, as it can be too late to substantially alter the policy design.

#### What does efficient and effective consultation look like?

Essentially, good consultation is fit for purpose and tailored to both the nature and magnitude of the proposals, and the needs of stakeholders. One size does not fit all.

Principles for effective and efficient consultation have been developed and published by a number of organisations. A summary of these is provided in the following table.

| <b>Features of efficient and effective consultation</b> |  |
|---|--|
| <b>Continuous</b>                                       | Undertaken throughout policy development process.  |
| <b>Timely</b>   | Realistic timeframes for stakeholders to respond. Undertaken early enough to have an impact on policy design.  |
| <b>Targeted</b>   | Need to consult relevant groups, including Māori.  |
| <b>Appropriate and accessible</b>                       | The way the consultation is carried out should be tailored to the information needs and preferred engagement styles of those being consulted such as email, meetings and written submissions. It should also be scaled to the magnitude and proposed impact of the proposal. |
| <b>Transparent</b>                                      | Stakeholders should understand how feedback was incorporated in policy development. Officials also need the capability to understand feedback to be able to incorporate (eg, may need to bring in technical expertise).  |
| <b>Clear</b>  | Consultation scope and objectives (including decisions already made) should be clear to stakeholders.  |
| <b>Co-ordinated</b>                                     | To the extent possible, processes should be co-ordinated across policy areas/sectors.  |

## 5 Preparing the RIS

The RIS is a government agency document, as distinct from a Cabinet paper which is a Minister's document. The RIS provides a summary of the agency's best advice to their Minister and to Cabinet on the problem definition, objectives, identification and analysis of the full range of practical options, and information on implementation arrangements. By contrast, the Cabinet paper presents the Minister's advice or recommendation to Cabinet.

The purpose of the RIS is to:

- provide the basis for consultation with stakeholders, and with other government agencies
- provide the basis for engagement with Ministers and therefore helping to inform and influence the policy discussion and Ministers' decisions
- inform Cabinet about the range of feasible options and the benefits, costs and risks of the preferred option(s), and
- enhance transparency and accountability for decision making through public disclosure once decisions are taken.

The RIS should provide an objective, balanced presentation of the analysis of impacts, with any conclusions reached by the agency explained and justified.

It should be prepared before the Cabinet paper, so that it informs the development of the preferred option and hence the Ministerial recommendations in the Cabinet paper. It should provide a reference point from which the Cabinet paper is developed, thus avoiding the need for a lengthy Cabinet paper and repetition between the two documents.

### 5.1 Disclosure statement

The agency is required to complete a disclosure statement on the front of the RIS, which:

- discloses information to highlight any key gaps, assumptions, dependencies and significant constraints, caveats or uncertainties in the analysis
- indicates whether any of the policy options are likely to have effects which may not align with the commitments in the [Government Statement on Regulation](#), and
- is signed by the person with responsibility for the production of the RIS.

The disclosure statement should be completed before the RIS is submitted for quality assurance, and included with the RIS that is provided to the reviewer.

### 5.2 Required information

The RIS must contain the following information:

- agency disclosure statement
- description of existing arrangements and the status quo
- problem definition
- objectives

- regulatory impact analysis – identification of the full range of feasible options, and analysis of the costs, benefits and risks of each option
- consultation
- conclusions and recommendations
- implementation issues, including risks, and
- arrangements for monitoring, evaluation and review.

A recommended option may be identified and discussed, but this is optional. The required information, and a suggested template, is set out in more detail in [Annex 2](#).

### 5.3 RISs for in-principle or intermediate policy decisions

As noted in [When do the RIA requirements apply?](#), the RIA requirements apply when in-principle or intermediate policy decisions are taken by Cabinet. This is particularly important when options are narrowed down (eg, particular options are selected for further work, and/or options are removed from consideration). At these points, it may not be possible to prepare a comprehensive RIS. Instead, a draft or interim RIS may be prepared, that provides, to the extent possible, the following information:

- agency disclosure statement
- description of existing arrangements and the status quo
- problem definition
- objectives, and
- options – the full range of feasible options, with an indication as to the likely nature and size of impacts associated with each. The implications (including any risks) of ruling out particular options that appear to be feasible should be discussed.

Often, the details of how a regulatory option will be implemented are not developed until after the high-level policy decisions have been taken. In these cases, it will be important that the RIS identifies the type of implementation issues that will need to be worked through and highlights any risks these may pose (eg, when the success of a regulation will rely on careful detailed design).

Draft or interim RISs may need to be updated for subsequent Cabinet decisions, to reflect the results of further analysis and any additional or new information that is available.

When a series of policy decisions is taken, it can be useful to refer to the RISs that were prepared for previous decisions. The nature of the earlier decisions should be explained, and URLs to the previous RISs provided. This background information can be presented in the status quo section, or as a separate introductory section.

### 5.4 Consultation and circulation

As discussed above in [Consultation](#), the draft RIS should be circulated for comment to relevant government agencies. Ideally, this should be done **before the Cabinet paper is prepared**. Otherwise it must be circulated with the draft Cabinet paper. It must also be included with draft Cabinet papers when they are submitted to Officials' Committees.

## 6 Obtaining quality assurance

### 6.1 Independent quality assurance

Independent quality assurance must be undertaken on all RISs. The criteria for assessing quality are the same regardless of whether the RIS is assessed by the authoring agency or by RIAT. If the quality assurance is undertaken by the agency, it must be done by a person or group not directly involved in preparing the RIS and nominated by the agency's Chief Executive. A statement on the quality of the impact analysis will be provided in the Cabinet paper (see [Section 7.2](#) below).

The reviewer (whether RIAT or the agency) will distinguish between the RIS (and the analysis it summarises) and the actual regulatory proposal. The role of the reviewer is not to provide advice on the merit of the regulatory proposals. So, whatever the reviewer's assessment of the quality of the RIS, it does not represent a view on the merits or otherwise of the options proposed.

Ideally, the quality assurance should be undertaken before final advice is provided to the portfolio Minister.

### 6.2 Quality assurance criteria

The dimensions of quality assurance against which RISs are to be assessed are set out in [Annex 3](#). They should be used in conjunction with the [overview of required information](#) for the RIS and the guidance on [impact analysis](#) provided in this handbook, including [consultation](#) requirements.

### 6.3 Features of a robust quality assurance process

The process for achieving robust quality assurance is not prescribed, as agencies will need to tailor processes according to their own structures, policy processes and available resources. However, the following characteristics should be considered:

- The reviewer is nominated by the agency's Chief Executive and provides the opinion on quality of the impact analysis in the Cabinet paper. This person should therefore have sign-out authority and have suitable **capability** – including a thorough understanding of the RIA regime, and sufficient experience and expertise in policy analysis.
- A certain level of **independence** is required. This means that the person responsible for the preparation of the RIS should not undertake the quality assurance.
- 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 RIS, including the completed disclosure statement. They may ask for material to test statements made in the RIS, eg, 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.

When the agency is responsible for providing the quality assurance, it can be acquired in different ways:

- Some agencies have internal RIS review panels, comprising people from different policy teams.
- A permanent panel may not be possible in smaller agencies. Another option is to identify a pool of experienced people who can be drawn on, on an *ad hoc* basis. This pool could be comprised of people from other agencies (ie, not just internally sourced).
- For some large or complex pieces of work, or for small agencies where conflicts of interest are difficult to avoid, it may be appropriate to outsource independent quality assurance such as from a private sector consultant or subject matter expert (eg, academic). In these circumstances, it is important that the reviewer is familiar with the government's RIA requirements and the quality assurance criteria.

In addition to the formal quality assurance, a further test of whether the RIS is clear and well-communicated is to have someone completely uninvolved with the subject matter review the RIS. This can help ensure that the RIS will be easily understood by audiences with perhaps little or no prior history of the issues, including Ministers (hence assisting decision-making), and also the general public when it is published (thus meeting the transparency and accountability functions of the RIS).

## 7 Preparing the Cabinet paper

All Cabinet papers must include a section entitled **Regulatory Impact Analysis**. This section comprises the following three parts, with sub-headings.

### 7.1 Regulatory Impact Analysis requirements

Statement explaining whether the RIA requirements apply to the proposal or any alternative options in the paper which Ministers may select, and if so whether a RIS has been prepared and attached to the Cabinet paper (and if not, the reasons why).

### 7.2 Quality of the Impact Analysis

This is a government agency opinion on the quality of the analysis and will state the following:

**“[Name of team or position of person<sup>6</sup> 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 criteria].”*

### 7.3 Consistency with Government Statement on Regulation

On 17 August 2009, the Government released a [Statement on Regulation](#) that commits to introducing new regulation only when Ministers are satisfied that it is required, reasonable, robust and reviewed. This applies to any Cabinet paper proposing to introduce or amend primary legislation or regulations.

Ministers are required to certify in the Cabinet paper that they have carefully considered whether the proposal(s) in the paper are consistent with the expectations set out in the Government Statement on Regulation. This text is to be entitled “*Consistency with Government Statement on Regulation*”.

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<sup>6</sup> If the quality assurance has been provided by, eg, an internal RIS review panel, the name of this panel would be stated. Otherwise the position title of the reviewer should be stated (eg, Manager, [ ... ] Team).

There are various options for this text, depending on the circumstances. Four possibilities are set out below:

“I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

- are required in the public interest
- will deliver the highest net benefits of the practical options available, and
- are consistent with our commitments in the Government statement “Better Regulation, Less Regulation.”

or

“I have carefully considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement. I am satisfied that regulation is likely to be required in the public interest but, as further policy details and implementation issues still need to be considered, I cannot yet be certain that the regulatory proposals in this paper will deliver the highest net benefits of the practical options available or are fully consistent with our commitments to deliver better regulation and less regulation. Consequently, this paper seeks only in principle policy decisions, and agreement to further policy development work.”

or

“I have considered the analysis and advice of my officials as summarised in the attached Regulatory Impact Statement. While this advice suggests that the benefits of the proposals I am recommending are highly uncertain, and may not provide the highest net benefits of the available policy options, they are necessary to deliver on our (election commitment/confidence and supply agreement with the XYZ party) to ..... ”

or

“In the timeframes for developing a response to ..... my officials have been unable to undertake proper regulatory impact analysis of the proposal in this paper. Consequently I cannot confirm that it is consistent with the commitments in our Government Statement on Regulation, but I believe it is necessary for us to act on the issue now regardless, due to the risk presented by..... ”

## 8 Publishing the RIS

The full text of all RISs is required to be published, in order to foster openness and transparency around the regulatory decision-making process. RISs must be published by:

- including the URLs to the location of the RIS on the lead agency **and** Treasury websites, in the press statement announcing any new policy for which a RIS is required
- being lodged on the lead agency's website **and** on the Treasury website, and
- including the URLs to the location of the RIS on the agency **and** Treasury websites, in the Explanatory Note to Bills that are introduced into the House.

For Bills, the [Parliamentary Counsel Office \(PCO\)](#) will provide standard wording for text to accompany the URLs. This wording may need to be adapted for different circumstances (eg, when multiple RISs for a series of policy decisions have been provided). Agencies must provide a specific, designated URL to PCO for each Bill. Select committee clerks will include relevant RISs in the material provided to Select Committees on Bills referred to that Committee.

Under normal circumstances, there should be adequate time for interested members of Parliament to download the relevant RISs for newly introduced Bills before the first reading debate. When legislation is being introduced under urgency, however, the lead agency is expected to provide 20 copies of the relevant RISs to the Bill's Office at the same time copies of the Bill are delivered.

### 8.1 Withholding sensitive or confidential information

Deletions can be made consistent with the provisions of the [Official Information Act 1982](#).

### 8.2 Timing of publication

Publication is required at the time any resulting Bill is introduced into the House, any resulting regulation is gazetted, or the government announces its decision not to regulate. RISs may be published earlier at the discretion of the responsible Minister and/or Cabinet.

### 8.3 Process for publication

When the RIS is due for publication (according to the requirements set out above), agencies must send the specific URL and a Word version of the RIS to Treasury at [ria@treasury.govt.nz](mailto:ria@treasury.govt.nz). The RIS on agency websites must comply with the New Zealand Government Web Standards and Recommendations, which are available at <http://webstandards.govt.nz>.

Agencies must keep Treasury informed (via [ria@treasury.govt.nz](mailto:ria@treasury.govt.nz)) about the timing of introduction/gazettal so that Treasury can publish the RIS as soon as possible after the Bill or regulations become publicly available.

Agencies should ensure that the URLs, along with accompanying text, are supplied to PCO in sufficient time to enable them to be included in the copies of the draft Bill that are printed for submission to the Cabinet Legislation Committee (LEG).

## 9 Regulatory proposals that do not meet the RIA requirements

For any regulatory proposal that does not meet the RIA requirements, Treasury may advise the Minister of Finance and the Minister for Regulatory Reform. This includes regulatory proposals:

- for which RIS was required but not prepared
- for which the RIS is deficient or
- which are inconsistent with the [Government Statement on Regulation](#).

For proposals that do not meet the criteria for RIAT involvement, this advice may be provided by the Treasury policy team.

### 9.1 Significant proposals that do not meet the RIA requirements

If a regulatory proposal meets the criteria for RIAT involvement, but does not meet the government's RIA requirements and is ultimately agreed to by Cabinet, then it will be subject to a post-implementation review. The nature and timing of this review are to be:

- agreed by the lead agency in consultation with Treasury, and
- signed off by the responsible Minister, in consultation with the Minister of Finance and the Minister for Regulatory Reform.

# Annex 1 – Preliminary impact and risk assessment

A preliminary impact and risk assessment (PIRA) is intended to:

- Help agencies determine whether Cabinet’s Regulatory Impact Analysis (RIA) requirements apply to a policy initiative for which they are responsible.
- Help agencies identify the potential range of impacts and risks that might be presented by the policy options for a policy initiative or review, in order that these can be appropriately addressed in the regulatory impact analysis undertaken.
- Help Treasury policy teams determine the level and sort of policy engagement they wish to have with the lead agency on this policy initiative.
- Help Treasury confirm whether the nature and size of the potential impacts and risks warrant RIAT involvement in providing independent assurance on the quality of the regulatory impact statement (RIS) that informs the policy proposals.

It should be started as early as possible in the policy process and should be provided to your Treasury policy team as soon as the agency thinks it has enough information to help Treasury make a call about the “significance” of the initiative. This may not require definitive answers to all questions.

|   |
|---|
| Name of the responsible government agency:  |
|   |
| Title of policy work programme or proposal:   |
|   |
| If known, the title(s) of the main Act and/or Regulations that could be amended or created: |
|   |
| Agency contact name and phone number:   |
|   |
| Date completed:   |
|   |

| Do the RIA requirements apply?   | Yes/No/Not sure |
|--|-----------------|
| Is this policy initiative expected to lead to a Cabinet paper?   |                 |
| Will this policy initiative consider options that involve creating, amending or repealing either primary legislation, or delegated legislation that is a regulation for the purposes of the Regulations (Disallowance) Act 1989? |                 |

If you can answer “no” to **either** of these two questions, the RIA requirements do not apply. There is no need to complete a PIRA (though the questions might still provide useful prompts).

| Additional exemptions from the RIA requirements   | Yes/No/Not sure |
|---|-----------------|
| If this initiative includes legislative options, are they covered by one or more of the following exemptions?   |                 |
| <ul style="list-style-type: none"> <li>• Technical “revisions” or consolidations that substantially re-enact the current law in order to improve legislative clarity or navigability (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies).</li> </ul>                                  |                 |
| <ul style="list-style-type: none"> <li>• Suitable for inclusion in a Statutes Amendment Bill (if not already covered by the point above).</li> </ul>  |                 |
| <ul style="list-style-type: none"> <li>• Would repeal or remove redundant legislative provisions.</li> </ul>  |                 |
| <ul style="list-style-type: none"> <li>• Provides solely for the commencement of existing legislation or legislative provisions.</li> </ul>   |                 |
| <ul style="list-style-type: none"> <li>• Needs to be authorised in an Appropriation Bill, an Imprest Supply Bill, or a Subordinate Legislation Confirmation and Validation Bill.</li> </ul>   |                 |
| <ul style="list-style-type: none"> <li>• Implements Deeds of Settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements.</li> </ul>   |                 |
| <ul style="list-style-type: none"> <li>• Essential (the minimum necessary) in order to comply with <u>existing</u> international obligations that are binding on New Zealand.</li> </ul>  |                 |
| <ul style="list-style-type: none"> <li>• Has no or only minor impacts on businesses, individuals or not-for-profit entities (such as might be the case for certain changes to the internal administrative or governance arrangements of the New Zealand government, like the transfer of responsibilities, staff or assets between government agencies).</li> </ul> |                 |

If all the legislative options associated with this policy initiative qualify for one of these exemptions, then the RIA requirements do not apply.

If claiming a full exemption, please confirm this assessment with your Treasury policy team. You do not need to submit a PIRA for this purpose, but you will need to provide information in support of this claim.

If some aspects of the legislative options for this initiative can stand independently from the rest, and qualify for one of these exemptions, then the RIA requirements do not apply to those aspects. Since a PIRA will still need to be completed and submitted to your Treasury policy team, it should note any important aspects of the initiative for which an exemption is claimed.

## The policy issue

What is the intended scope of the policy initiative?

*Brief description:*

What are the main underlying policy issues/problems to which this policy initiative is responding?

*Brief description:*

What is known about the magnitude of these policy issues/problems?

*Brief description:*

What is the type or nature of the evidence supporting the problem definition?

*Brief description:*

## The policy process

Who has commissioned this work? Who is responsible for its delivery?

*Brief description:*

What is the expected policy process, and expected timing of key deliverables?

(Is this initiative in your current regulatory plan? Is this policy process constrained by any commitments or existing obligations?)

*Brief description:*

What consultation process is planned, and who will be consulted?

*Brief description:*

If any established methodology or form of analysis is to be followed or incorporated, please identify

*Brief description:*

## The policy options

If the range of policy options to be considered is already constrained by existing legislation or previous Cabinet decisions, what are those constraints?

*Brief description:*

If this involves only delegated legislation, what is the legislative authority under which it must be made?

*Brief description:*

Which groups are likely to be noticeably affected (either through benefits or costs) by the policy options being considered?

Individuals, families and/or households? Consumers? Employees? Businesses? Not-for-profit organisations (including charities, voluntary organisations and incorporated societies)? People who live in particular regions? Users of resources eg, recreational fishers, road-users? Members of particular groups of the population (eg, ethnicities, genders, age groups etc) Central government agencies? Local government? Other?

*Brief description:*

| Policy impacts  | Yes/No/Not sure |
|---|-----------------|
| Will any policy options that may be considered, potentially:  |                 |
| <ul style="list-style-type: none"> <li>Take or impair existing private property rights?</li> </ul>  |                 |
| <ul style="list-style-type: none"> <li>Affect the structure or openness of a particular market or industry?<br/>For example, assist or hinder businesses to provide a good or service; establish or remove a licence, permit or authorisation process; create or remove barriers for businesses to enter or exit an industry?</li> </ul>  |                 |
| <ul style="list-style-type: none"> <li>Impact on the environment, such as regulations that affect the use and management of natural resources?</li> </ul>   |                 |
| <ul style="list-style-type: none"> <li>Have any significant distributional or equity effects?<br/>For example, where significant costs are imposed or significant benefits conferred on different sectors of the population?</li> </ul>   |                 |
| <ul style="list-style-type: none"> <li>Alter the human rights or freedoms of choice and action of individuals?</li> </ul>   |                 |
| <ul style="list-style-type: none"> <li>Have any other significant costs or benefits on businesses, individuals or not-for-profit organisations?<br/>For example impose additional compliance costs; introduce or alter government cost recovery arrangements; impact on New Zealand's international capital flows or trade including the flows of goods, services, investment and ideas to and from New Zealand; impact on the incentives to work or the mobility of labour, or to invest in education or skills; impact on resource allocation, saving or investment?</li> </ul> |                 |

For the major types of impacts you have identified, please provide brief information about the nature and likely magnitude of the impacts (in whatever dimensions seem most useful and available).

| Policy, design and implementation risks  | Yes/No/Not sure |
|--|-----------------|
| Is the evidence-base for the effectiveness of different policy options weak or absent?   |                 |
| Are the expected benefits or costs of the policy options likely to be highly uncertain?  |                 |
| Is the success of any of the options likely to be dependent on other policy initiatives or legislative changes?  |                 |
| Are any of the legislative options likely to have flow-on implications for the future form or effectiveness of related legislation?  |                 |
| Are any of the legislative options likely to be novel, or unprecedented?   |                 |
| Are any of the legislative options likely to be inconsistent with fundamental common law principles?   |                 |
| Are any of the legislative options likely to be inconsistent with New Zealand's international obligations, or New Zealand's commitment toward a single economic market with Australia? |                 |
| Are any of the legislative options likely to include a new power to create delegated legislation, or grant a broad discretionary power to a public body?                               |                 |
| Are any of the legislative options likely to include provisions that depart from existing legislative norms for like issues or situations?   |                 |
| Are there other issues with the clarity or navigability of, or costs of compliance with, the current legislation that it might be good to address at the same time?                    |                 |
| Will people with expertise in implementation provide input on the policy design before policy decisions are taken?   |                 |
| Are implementation timeframes likely to be challenging?  |                 |
| Are the actual costs or benefits highly dependent on the capability or discretionary action of the regulator?  |                 |

| Agency's preliminary assessment  | Treasury confirmation |
|--|-----------------------|
| Do the RIA requirements apply to this policy process or proposal?  |                       |
|  |                       |
| Would any resulting regulatory proposal be likely to have a significant impact or risk and therefore require RIAT involvement? |                       |
|  |                       |

# Annex 2 – Regulatory Impact Statement: Overview of required information

This template sets out the elements that must be considered and addressed as part of Regulatory Impact Analysis, and summarised in the Regulatory Impact Statement. In some cases not all items will be relevant and in others more detailed analysis will be required.

Flexibility is permitted in the presentation of this information - for instance, some information may be usefully presented in tables or diagrams. There is no formal page limit; but the RIS should try to concisely summarise the analysis undertaken. Long or complex RISs should include a summary (for example an executive summary or summary table of options analysis). Paragraph and page numbers should be included.

## Regulatory Impact Statement

### Title of Proposal/Name of Issue

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by *[name of agency]*.

It provides an analysis of options to *[state what problem the options in this paper seek to address]*.

*[A paragraph describing the nature and extent of the analysis undertaken, explicitly noting:*

- *key gaps, key assumptions, key dependencies, and any significant constraints, caveats or uncertainties concerning the analysis, and*
- *any further work required before any policy decisions could be implemented.]*

*[A paragraph identifying whether or not any of the policy options are likely to have effects that the government has said will require a particularly strong case before regulation is considered – namely it could:*

- *impose additional costs on businesses*
- *impair private property rights, market competition, or the incentives on businesses to innovate and invest, or*
- *override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines).]*

[Name and designation of person responsible for preparing the RIS]

[Signature of person]

[Date]

## Status quo and problem definition

- Describe the key features of the current situation, including any existing legislation/regulations or other government interventions/programmes, and features of the market, as relevant.
- Explain any relevant decisions that have already been taken.
- Describe the costs and benefits of status quo, ie, expected outcomes in the absence of any further government action.
- Identify the root cause of the problem (not just the symptoms).

## Objectives

- Explain the desired government outcomes/objectives against which the options are assessed, eg, the level of risk reduction to be achieved.
- State whether there is an authoritative or statutory basis for undertaking the analysis, eg, a legislative requirement to annually review the regulation.
- State whether the outcomes are subject to any constraints, eg, whether they must be achieved within a certain time period or budget.

## Regulatory impact analysis

- Identify the full range of practical options (regulatory and non-regulatory) that may wholly or partly achieve the objectives. Within the regulatory options, this includes identifying the full (viable) range of regulatory responses.
- For each feasible option:
  - identify the full range of impacts (including economic, fiscal, compliance, social, environmental and cultural) and provide an appropriate level of quantification
  - describe the incidence of these impacts (ie, who bears the costs and the benefits).

## Consultation

- Explain who has been consulted and what form the consultation took.
- Outline key feedback received, with particular emphasis on any significant concerns that were raised about the preferred option, how the proposal has been altered to address these concerns (and if not, why not).
- If there was no limited or no consultation undertaken, the reasons why.

## Conclusions and recommendations

- Summarise and present the outcome of the options analysis.
- It is not mandatory for an agency to recommend or reject a particular option. But where an agency does so, it should explain and justify their recommendation in the RIS.

## Implementation

- Summarise how the proposed option(s) will be given effect, including transitional arrangements.
- Describe how implementation risks will be being mitigated.
- Describe the steps that are being taken to minimise compliance costs.
- Describe how the proposal would interact with, or impact on, existing regulation, including whether there is scope to reduce or remove any existing regulations.
- Outline the enforcement strategy that will be implemented to ensure that the preferred option achieves its public policy objectives.

## Monitoring, evaluation and review

- Outline plans for monitoring and evaluating the effectiveness of the preferred option, including performance indicators and how the necessary data will be collected.
- Explain how it will be reviewed and what the review process will involve (and if no plans for review, the reasons why).

# Annex 3 – 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.

|  |
|--|
| <p><b>Dimensions</b></p>   |
| <p><b>Complete</b></p> <ul style="list-style-type: none"> <li>• Is all the <a href="#">required information</a> (including the disclosure statement) included in the RIS?</li> <li>• Are all substantive elements of each fully-developed option included (or does the RIS identify the nature of the additional policy work required)?</li> <li>• Have all substantive economic, social and environmental impacts been identified (and quantified where feasible)?</li> </ul>   |
| <p><i>Reviewer’s opinion:</i></p>  |
| <p><b>Convincing</b></p> <ul style="list-style-type: none"> <li>• Are the status quo, problem definition and any cited evidence presented in an accurate and balanced way?</li> <li>• Do the objectives relate logically to, and fully cover, the problem definition?</li> <li>• Do the options offer a proportionate, well-targeted response to the problem?</li> <li>• Is the level and type of analysis provided <a href="#">commensurate</a> with the size and complexity of the problem and the magnitude of the <a href="#">impacts and risks</a> of the policy options?</li> <li>• Is the nature and robustness of the cited evidence commensurate with the size and complexity of the problem and the magnitude of the <a href="#">impacts and risks</a> of the policy options?</li> <li>• Do the conclusions relate logically and consistently to the analysis of the options?</li> </ul> |
| <p><i>Reviewer’s opinion:</i></p>  |
| <p><b>Consulted</b></p> <ul style="list-style-type: none"> <li>• Does the RIS show evidence of <a href="#">efficient and effective consultation</a> with all relevant stakeholders, key affected parties, government agencies and relevant experts?</li> <li>• Does the RIS show how any issues raised in consultation have been addressed or dealt with?</li> </ul>   |
| <p><i>Reviewer’s opinion:</i></p>  |

## 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].”*