Regulatory Impact Analysis Handbook

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THE TREASURY
Kaitohutohu Kaupapa Rawa

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Contents

Part 1: Introduction and RIA First Steps

This section sets out the purpose of Regulatory Impact Analysis (RIA) and how to work out whether the requirements apply to your project—including how to complete a Preliminary Impact and Risk Assessment (PIRA).

A quick guide to Cabinet's RIA requirements

1. Determine whether the RIA requirements could apply	Are you starting policy work with potential regulatory implications that will lead to submission of a Cabinet paper? "Potential regulatory implications" means options that could involve creating, amending or repealing primary legislation or regulations. If potential regulatory implications, complete Preliminary Impact and Risk Assessment (PIRA) If no potential regulatory implications, RIA requirements do not apply. The RIA framework is still useful to structure analysis
2. Prepare Preliminary Impact and Risk Assessment (PIRA)	Discuss the PIRA with your Treasury policy team as early as possible, to confirm whether the RIA requirements apply and whether any of the potential regulatory proposals are likely to have a significant impact or risk. If Treasury confirms that no significant impact or risk is likely, then the agency will be responsible for quality assurance If Treasury confirms that there is likely to be significant impact or risk, Regulatory Impact Analysis Team (RIAT) involvement is required. Early engagement is recommended
3. Undertake regulatory impact analysis (RIA)	Apply the RIA framework to your work from the start of the policy development process. RIAT is available to provide RIA training and project-specific assistance. Discussion documents containing options with a potential for significant impact or risk must be provided to RIAT for comment prior to consultation.
4. Prepare the Regulatory Impact Statement (RIS) and Agency Disclosure Statement	The RIS should be prepared before the Cabinet paper. It provides a standalone summary of the impact analysis for decision-makers and must include all the required information. The relevant policy manager responsible for producing the RIS is required to complete and sign the disclosure statement, within the RIS
5. Obtain independent quality assurance of the RIS	Independent quality assurance must be provided either by RIAT or through a suitable internal review process. A quality assurance statement (drafted by RIAT or agency's internal QA) must be provided in the Cabinet paper
6. Prepare Cabinet paper	The Cabinet paper focuses on the Minister's proposal. It should refer to the RIS, appended to the Cabinet paper
7. Publish the RIS	All RISs must be published 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
8. Complete Disclosure Statement	A disclosure statement is required for all government Bills (unless exempt) and all "substantive" government SOPs. Disclosure statements are to be provided to Cabinet along with the Bill or SOP when final approval is sought to introduce legislation.
9. If RIA requirements not met	All "significant" regulatory proposals that do not meet the RIA requirements will undergo a post-implementation review. This includes proposals that are not accompanied by a RIS but to which the RIA requirements apply.

1 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 supports and supplements the information provided in the CabGuide. It also incorporates Cabinet's decisions on changes to the RIA requirements taken since 2009, when the previous edition was published.

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.

1.1 Further information

This handbook cannot address all potential issues that may arise in regulatory proposals or policy situations. We recognise that developing effective legislation is a complex undertaking and that the realities of the policy development process may at times differ from the idealised process set out in this handbook. Consequently, there will be times when agencies will need to exercise their best judgement on how 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 the authoritative source of general guidance and can assist agencies with RIA good practice and on-going training.

The Treasury may issue more detailed, supplementary guidance on specific topics, where experience shows that such additional material would be helpful. For example the Cost Benefit Analysis Primer is a valuable resource when determining the impact of each regulatory option considered.

1.2 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 in **July 2013**.

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

1.3 Requirements for improved disclosure of RIA

Cabinet in April 2013 agreed to increase the transparency of the RIA leading up to Cabinet consideration at the stage of introducing new legislation. Departments are now required to disclose in a standalone statement the quality assurance processes they have undertaken during the development of legislation, and key features of that legislation that are likely to be of interest to the public and Parliament

A disclosure statement is separate from a RIS (and separate from the Agency Disclosure Statement within the RIS, or ADS). Like a RIS, however, it is a departmental document that provides factual information about the development and content of legislation proposed by the government. It largely takes the form of a series of questions that must be answered YES or NO, with further information required to elaborate, explain or clarify the answer given

The information required for disclosure is linked to existing government expectations for the development of legislation, or to significant or unusual features of legislation that tend to warrant careful scrutiny. The Detailed Guide to Disclosure Statements can be found online at: www.treasury.govt.nz/publications/guidance/regulatory.

For further assistance or guidance with disclosure statements and their relationship with RISs, contact RIAT: ria@treasury.govt.nz.

1.4 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.

2 The purpose of Regulatory Impact Analysis (RIA)

The purpose of Regulatory Impact Analysis (RIA) is to help achieve a high quality regulatory environment by ensuring that regulatory proposals are subject to careful and robust analysis. RIA is intended to provide assurance about whether problems might be adequately addressed through private or non-regulatory arrangements—and to ensure that particular regulatory solutions have been demonstrated to enhance the public interest.

RIA summarised in a Regulatory Impact Statement (RIS) can serve two benefits:

- **Enhancing the evidence-base to inform decisions** about regulatory proposals—to ensure that all practical options for addressing the problem have been considered and that the benefits of the preferred option not only exceed the costs but will deliver the highest level of net benefit, and
- **Transparency**—the presentation of agencies' free and frank advice to decision-makers at the relevant decision points provides reassurance that the interests of all sectors of the New Zealand public have been considered. RIA also aims to encourage the public to provide information to enhance the quality of regulatory decisions, to further inform the evidence-base.

2.1 Cabinet's expectations for Regulatory Stewardship

In April 2013, Cabinet agreed to a set of expectations for the public sector's responsibilities for regulation [CAB Min (13) 6/2B refers].

The expectations outline at a high level how agencies should design and implement regulation. The agency should not propose regulatory change without:

- clearly identifying the policy or operational problem it needs to address, and undertaking impact analysis to provide assurance that the case for the proposed change is robust, and
- careful implementation planning, including ensuring that implementation needs inform policy, and providing for appropriate review arrangements.

The full list of stewardship expectations can be found in the Guidance on Regulatory System Reports.[1]

2.2 The role of RIAT

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

- provide quality assurance (see Part 5) of the RIS for regulatory proposals likely to have a significant impact or risk
- provide comments on draft discussion documents for significant proposals
- 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 draft terms of reference for major pieces of work (eg, cost benefit analyses), and
- referring proposals to other departments, agencies or specialists who have relevant expertise in regulatory quality issues or the subject matter.

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[1] Available online at: http://www.treasury.govt.nz/publications/guidance/regulatory/systemreport/04.htm#_toc1.2

3 When do the RIA requirements apply?

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

- considers options that would involve creating, amending or repealing legislation (either primary legislation or disallowable instruments for the purposes of the Legislation Act 2012), and
- is expected to result in a paper being submitted to Cabinet for approval[2].

This includes papers submitted to Cabinet seeking:

- the release of a discussion document (see Part 3) that contains options that may lead to regulatory change (although a RIS is not necessarily required if the RIA elements are incorporated in consultation material—see section on *Effective Consultation* (Part 3)
- "in principle" policy decisions and intermediate policy decisions, (see Part 4) particularly those where policy options are narrowed down (eg, limiting options for further work/consideration, negotiating mandates for certain international agreements)
- decisions to introduce 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.

The RIA requirements should be met in one of the following ways:

- where Cabinet is being asked to give policy approval, a RIS must accompany the Cabinet Paper, or
- where Cabinet is being asked for permission to consult on potential regulatory options, the substantive RIA elements must be incorporated into the discussion document (or a draft RIS attached to the discussion document).

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).

To meet the RIA requirements, RISs (or discussion documents if no RIS is produced at the consultation stage) must be complete, convincing, clear, and concise. Efficient and effective consultation must also have taken place during the RIA process, and be accurately reflected in the RIS. The specific requirements are set out in the section *Undertaking RIA* (see Part 2).

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2 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.

3.1 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:

- involve 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
- would repeal or remove redundant legislative provisions
- provide solely for the commencement of existing legislation or legislative provisions;
- need to be authorised in an Appropriation Bill or an Imprest Supply Bill
- are for a Subordinate Legislation (Confirmation and Validation) Bill relating to regulations that have already been made
- implement deeds of settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements
- bring into effect recognition agreements under the Marine and Coastal Area (Takutai Moana) Act 2011
- 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 government, like the transfer of responsibilities, staff, or assets between government agencies).

3.2 Discussion documents

The RIA requirements apply to discussion documents that include consideration of options that may lead to regulatory changes. A Cabinet paper seeking to release a discussion document with regulatory proposals must apply RIA in one of two ways: either a consultation/interim RIS must be appended to the discussion document; or the discussion document itself must include the substantive RIA elements. Discussion documents for significant issues must be provided to RIAT for comment prior to consultation.

Under most circumstances, Treasury recommends that departments include the elements of a RIS (a summary of the RIA) in the discussion document. In some cases—such as when a Cabinet paper seeks in-principle decisions or seeks to narrow options prior to consultation—a RIS will usually be required. Such cases are best determined either by agencies or with RIAT on an individual basis as early as possible.

Whether or not a separate RIS is prepared, the discussion document should include the RIA elements, as doing so will optimise the value of consultation for subsequent policy development. Incorporating the RIA elements 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 would be implemented, monitored, and reviewed. 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.

Further information on the features of good discussion documents and consultation processes are summarised in the *Effective Consultation* section (see Part 3).

3.3 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–such as how the SOP alters the nature and/or magnitude of the impacts).

3.4 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 an 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[3], which includes the NIA drafting instructions, contains detailed guidance about how the RIA requirements apply to treaties. 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).

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3 Available online at: http://www.mfat.govt.nz/Treaties-and-International-Law/03-Treaty-making-process/

4 Scoping the issue and planning the project: Preliminary impact and risk assessment (PIRA)

Completing a preliminary impact and risk assessment (PIRA) is the first step in the RIA process. The PIRA is a basic project plan for the RIA that the agency intends to complete before proposing recommendations to Cabinet.

4.1 What is a PIRA?

A PIRA is a document that 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, so that they can be appropriately addressed in the regulatory impact analysis
- 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 (the significance criteria).

4.2 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 (see Annex 1.1).

4.3 Process for completing the PIRA

Work on the PIRA should start as early as possible in the policy process. The PIRA should be signed off by the relevant policy manager with responsibility for the completion of the work or development of the proposal.

The PIRA should be provided to the relevant Treasury policy team (and copied to RIAT via ria@treasury.govt.nz) as soon there is enough information to make a call about whether the RIA requirements apply (primarily using information in the PIRA and discussion with agencies about potential impacts), significance, and whether RIAT involvement is required. This may not require definitive answers to all questions.

4.4 If RIAT involvement is required

RIAT provides independent quality assurance of RISs for regulatory proposals likely to have a significant impact or pose a significant risk. If RIAT involvement is identified as necessary through completing a PIRA, the next step is to engage with RIAT to determine the nature of their involvement in the policy development process.

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
- where 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
- where 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.

Annex 1.1
Preliminary impact and risk assessment

Purpose of the PIRA: 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.
- Provide an initial plan for RIA processes and identify milestones, timeframes, and who to consult.
- 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 early RIAT engagement on RIA elements and involvement in providing independent quality assurance (QA) on the quality of the regulatory impact statement (RIS) that informs the policy proposals.

When to complete a PIRA: It should be started as early as possible in the policy development process (as soon as policy work commences). This includes processes such as reviews of policy or legislation where it is not known at the outset whether a regulatory option will ultimately be selected or preferred, but is one of the available policy options being considered.

How to complete it: Provide as much information as possible given the stage of policy development. **This may not require definitive answers to all questions**, and you may need to apply your judgement. Relevant supporting information may be attached. If there is insufficient information to enable Treasury to confirm "significance" at the initial stages of the policy process, the final confirmation of this may be deferred until later in the process.

Who to send it to: The PIRA should be provided to your Treasury policy team and copied to RIAT (email ria@treasury.govt.nz). Please also liaise with your agency's RIA team or panel (if you have one).

Who to contact if you have any questions: Your Treasury policy team is your first point of contact for enquiries about completing the PIRA.

Section 1: General information

Name of the responsible (or lead) 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:

Section 2: Do the RIA requirements apply?

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 legislation (either primary legislation or disallowable instruments for the purposes of the Legislation Act 2012)?	

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?	
• 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)	
• Suitable for inclusion in a Statutes Amendment Bill (if not already covered by the point above).	
• Would repeal or remove redundant legislative provisions.	
• Provides solely for the commencement of existing legislation or legislative provisions (this does not include changing the existing commencement date).	
• Needs to be authorised in an Appropriation Bill, an Imprest Supply Bill.	
• Is for a Subordinate Legislation (Confirmation and Validation) Bill relating to regulations that have already been made	
• Implements Deeds of Settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements.	
• Brings into effect recognition agreements under the Marine and Coastal Area (Takutai Moana) Act 2011	
• Essential (the minimum necessary) in order to comply with existing international obligations that are binding on New Zealand.	
• 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).	

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.

Section 3: Description and context

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 (ie, the root cause of the problem)?
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 (ie, a portfolio Minister, an agency at the request of industry or the public, etc)? Is this initiative in your current regulatory plan? Who is responsible for its delivery?
Brief description:
What is the expected policy process, and expected timing of key milestones? *(Please indicate, as far as possible, intended timeframes for consultation, Cabinet consideration, drafting, and implementation)* Are there any process or timing commitments, existing obligations, constraints, or previous Cabinet decisions that are relevant?
Brief description:
What consultation process is planned, and who will be consulted?
Brief description:

The policy process
If any established methodology or form of analysis is to be followed or incorporated, please identify
Brief description:

The policy options
Are there feasible non-regulatory options to consider? Is it possible that legislation is not required?
Brief description:
If the range of policy options to be considered is already constrained by existing government commitments, Ministerial directions, 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 might be noticeably affected (either positively or negatively) 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:

Section 4: Are the significance criteria met?

A regulatory initiative if considered to trigger the significance criteria if any of the options 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.

Are there significant impacts?	Yes/No/Not sure
Will any policy options that may be considered, potentially:	
• Take or impair existing private property rights?	
• Affect the structure or openness of a particular market or industry? *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?*	
• Impact on the environment, such as regulations that affect the use and management of natural resources?	
• Have any significant distributional or equity effects? *For example, where significant costs are imposed or significant benefits conferred on different sectors of the population?*	
• Alter the human rights or freedoms of choice and action of individuals?	
• Have any other significant costs or benefits on businesses, local or central government, individuals or not-for-profit organisations etc? *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, fiscal costs to government?*	

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).

Are there significant policy, design or implementation risks?	Yes/No/Not sure
Are any of the legislative options likely to be novel, or unprecedented?	
Is the evidence-base for the size of the problem or the effectiveness of different policy options weak or absent?	
Are the benefits or costs of the policy options likely to be highly uncertain? Are there obvious risks that need to be managed?	
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 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?	
Do any of the legislative options have the potential to be inconsistent with or have implications for New Zealand's international obligations?	
Are there any issues arising in relation to New Zealand's commitment toward a single economic market with Australia? Please check with the Ministry of Business Innovation and Employment. There may be, for instance, issues relevant to the Trans-Tasman Mutual Recognition Agreement (TTMRA).	
Are any of the legislative options likely create or extend a power to make 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? *These may include Bill of Rights Act and Privacy Act issues, fundamental common law principles, retrospective rule-making, creation of strict liability offences or burden of proof reversals, and matters affecting civil or criminal immunity. Please see the Legislative Advisory Committee Guidelines on Process and Content of Legislation.*	
Are any of the options likely to create, amend, or remove offences or penalties (including pecuniary penalties), the jurisdiction of a court or tribunal, or impact on court-based procedures and workloads?	
Has implementation testing and operational expertise been integrated into the plan for evaluating options?	
Is there a possibility that local government will be expected to implement, administer, or enforce any options?	
Are implementation timeframes likely to be challenging?	
Are the actual costs or benefits highly dependent on the capability or discretionary action of the regulator?	

Section 5: Agency assessment and Treasury confirmation

Agency's preliminary assessment	Treasury's Assessment
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?	

Part 2: Undertaking RIA

This section provides guidance on undertaking the regulatory impact analysis (RIA) that will ultimately be summarised in the Regulatory Impact Statement (RIS) accompanying Cabinet recommendations.

1 The Regulatory Impact Analysis (RIA) Steps

This section describes the key elements of good Regulatory Impact Analysis (RIA). These elements should underlie the development of any policy for Cabinet consideration to which the RIA requirements apply, and should be summarised in the RIS.

This guidance is detailed because RIA is expected to deal with various policy problems and a 'one-size-fits-all' approach is not possible. Good RIA is essentially just robust policy development within a transparent framework, so several factors will be relevant to particular regulatory proposals. The detail in this guidance should not suggest that a resulting RIS (as a **summary** of the RIA) should be lengthy and overly detailed.

2 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 description of the status quo should cover the following key features of the current situation.

2.1 Features of the market or relevant social arrangements

The description of the status quo should include consideration of the relevant prevailing market conditions or social arrangements. This may, for example, include expected demand and supply trends, and other features or characteristics such as relevant market participants or agents. This means identifying the producers, suppliers, retailers, consumers, beneficiaries, regulators, any other interested parties, and describing their interests.

RIA needs to be forward-looking in order to assess alternative options for dealing with a problem over time. It is therefore useful to identify how the status quo is likely to change over time without further intervention—rather than simply providing a static snapshot.

2.2 Existing legislation/regulations

The status quo should describe any existing legislation/regulations, or other relevant government interventions or programmes that are in place.

If there are non-regulatory, self-regulatory, or co-regulatory arrangements in place, these also form part of the status quo. The description should be detailed enough to enable an interested (but non-expert) member of the public to understand:

- who are the relevant parties and institutions—both public and private, regulators and regulatees, quasi-governmental, unions or clubs, and charitable organisations, etc
- what are the different incentives and observed behaviours of those parties and institutions, and
- what are the tools or resources those parties and institutions currently have available.

2.3 Any relevant decisions that have already been taken

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.

If Cabinet has previously considered a proposal, for instance by directing or limiting scope for officials starting work on an issue which is in its early stages, prior decisions should be described in the status quo of the RIS. Previous related RISs should be briefly summarised and referenced so that the public can follow the overall RIA.

2.4 Confidence and supply agreements

Confidence and Supply agreements generally commit to specific policy options to achieve set objectives. These commitments are outside the Cabinet decision making process.

The analysis undertaken by Agencies in these situations usually focuses on design and implementation issues for the stipulated option. However, the RIS should at a minimum include information on:

- the merits of the policy objectives (if any) sought to be achieved by the specific commitment in the confidence and supply agreement
- the nature of the policy problem that is being addressed, and
- any alternative options for achieving the objectives / solving the problem that were not considered because of directions as to the scope of the policy process, and whether any of them might better achieve the objectives / solve the problem.

In some circumstances a full analysis will be both feasible and desirable—and may already have been undertaken by the Agency. In such cases, and where the issues at stake are significant, the RIS should include the full analysis. RIAT should be consulted where there is any doubt about the RIS to be prepared in these circumstances.

3 Define the problem and assess its magnitude

RIA requires a problem to be identified. Having *described* the status quo, the next task is to assess the nature and size of the problem associated with the expected outcomes in the absence of any further government action. A good problem definition will explain the gap between the current situation (what officials expect to be the status quo projected over the period of analysis) and the outcome that the agency is aiming for (as described in the objectives). Problems should be couched in terms of public interest, broadly considered.

A problem definition will be the *prima facie* case for regulatory intervention and the reason for discussing options. The problem should be able to be summarised in a pithy sentence.

3.1 Size of the problem

The problem definition needs to do more than identify the gap between status quo and objectives: it should discuss its size and importance. This involves identifying 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.

Not everything can or should be valued in monetary terms, but quantification should occur to the extent possible. For example, if the problem is related to economic efficiency, how much is at stake? If equity-related, what is the current distribution of costs and benefits? If an environmental problem, what is the potential effect of not acting and what are the overall costs? This quantification should include aggregate figures (totals) to help put the issue in a wider perspective.

3.2 Distinguish between causes and symptoms of problems

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. Detail should be provided as to the nature of the problem—for example, if the market failure is a result of information asymmetries, the problem definition needs to identify who is unable to access what information and how their behaviour results in evidence of a problem.

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** or its **implementation**, or both.

In practice, the status quo and problem may be inter-related and considered or discussed together. For instance, the problem may be best expressed by describing how policy objectives are not being met. However, the key elements of both should be addressed.

Identifying and diagnosing problems

Voluntary arrangements between parties are often the best way to promote the long-term interests of consumers, employees, entrepreneurs, investors, government and wider society. However, there are circumstances when voluntary transacting can fail. Good problem definition requires an understanding of the failures that can arise from voluntary transacting, and self- or co-regulatory initiatives, and government regulatory arrangements:

- **Imperfect competition**—where one or more party is able to control a market for their own benefit at the expense of consumers or other firms.
- **Information problems**—where one party to a transaction does not have the information needed to act in their best interests. In extreme circumstances this can lead to significant costs to many parties and the market being under-developed because of a lack of trust.
- **Externalities (spill-overs)**—where costs or benefits fall on people other than those who consume the good or service. This can lead to the over- or under-provision of the good or service, and
- **Public and mixed goods**—where a good or service is:
  - *under-supplied*, because it cannot be charged for
  - *under-consumed*, because consumers are being directly charged but their consumption is not incurring extra costs, (ie, it non-rivalrous), or
  - *over-consumed*, because there is free access to the resource but consumption still imposes costs.
- **Lack of clear property rights**—unclear, ill-defined, or poorly designed property rights can mean that parties do not bear the consequences or receive the rewards that result from their actions.

Self- or co-regulatory arrangements can go some way to correcting these failures, but there are risks that other problems are created. The regulatory body might be captured to promote the interests of its members at the expense of the public (rent-seeking), in particular where members have strong market power. Such arrangements may lack legitimacy and credibility (thereby undermining effectiveness), or lack the capability and capacity to deal effectively with new or emerging problems.

The problem may relate to current regulation and previous attempts to manage risks. The government can fail where it lacks the capability or information, or has poor incentives to do a better job than voluntary and self- or co-regulatory arrangements. As well as each of the above problems, direct regulation can risk leading to further problems with:

- **Unintended consequences**—by inducing behaviour or providing incentives that do not improve welfare
- **Inefficient regulatory enforcement**—in the absence of market pressures, there may be a risk of institutional failure. For example, regulatory activity might not reflect the current preferences or risk-tolerances of the public
- **Moral hazard**—making the market less responsive to competitive pressure by giving an implicit guarantee of government support or protecting incumbents from competition
- **Crowding-out**—a reduction in private economic activity due to complying with regulation
- **Rent seeking behaviour**—government involvement can open the door to political lobbying to be given a share of wealth that has already been created. As with crowding-out, this activity distracts from creating new wealth.

4 Define the objectives

The objectives should summarise the Government's policy intentions, but also inform how any potential regulatory solution will be evaluated for effectiveness.

The objectives, outcomes, goals or targets that are sought in relation to the identified problem should be described. These may be a restatement of the current policy objectives if they are relevant to the status quo, or they may be particular to the problem identified in the previous section—it is important to state the objectives of any current policy arrangements and whether those objectives have changed as a result of identifying a 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, but should allow the consideration of all feasible alternative options. If they do not, the objectives are likely to be too narrow.

There is usually more than one policy objective, meaning there may be potential for conflict between objectives. Balancing objectives may reflect that regulating is not costless, or that there are multiple outcomes expected by society. It should be clear how trade-offs between competing objectives are going to be made and the weightings given to objectives—not just those in direct conflict. The Treasury's Living Standards Framework provides one example of how to think about trade-offs and how to incorporate social aims into regulatory objectives[4].

There may also be a hierarchy of objectives, particularly when the desired high-level policy outcomes cannot be directly measured. More specific assessment criteria and observable targets should be used to measure progress towards achieving policy objectives. 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.

Stating the objectives should also provide scope for the subsequent impact analysis. What questions will officials be asking themselves (and what information will Ministers need) when ranking options?

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4 The Treasury's Living Standards Framework can be found online at: http://www.treasury.govt.nz/abouttreasury/higherlivingstandards

5 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. This should include both regulatory and non-regulatory options. Within regulatory options, a representative and pertinent spectrum of viable regulatory forms should be considered.

If the range of options has been previously limited by Cabinet or by specific Ministers, this should be made clear as part of describing the status quo.

If the range of feasible options for responding to an identified problem has been restricted without a formal Cabinet decision, the reasoning behind this direction should be explained by setting out the policy objectives in the RIS. Where policy work has been limited without detailed analysis, the agency may need to outline the implications of this in the RIS, and in particular the Agency Disclosure Statement.

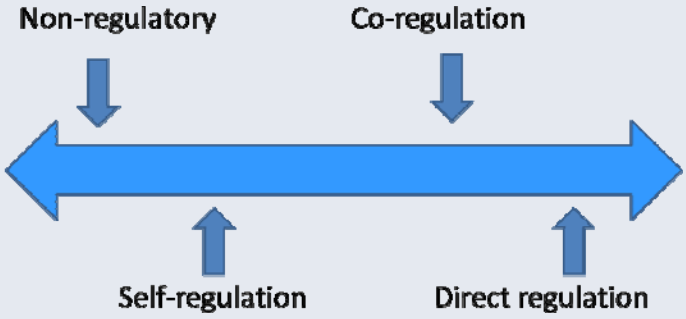
It is not always possible to analyse every possible combination or permutation of policy tools within options–there might be an infinite range of options. Unless past decisions limit the set of options that can be considered, RIA should identify and describe:

- the status quo scenario projected forward—where no further regulatory changes occur (behaviour may still be expected to change over time)
- one or more non-regulatory options (eg, education, industry self-regulation)
- one or more regulatory options, and
- what would happen without regulation or government intervention (if different from the status quo).

If deliberately excluding feasible options, or options that affected parties are likely to think are feasible, the RIA (and subsequent RIS) should explain why. If these exclusions or restrictions would lead to any shortcomings in the analysis, or increase the risks or making the decision, this should be noted in the Agency Disclosure Statement (ADS) within the subsequent RIS.

Regulatory alternatives

A variety of regulatory and non-regulatory instruments are available to achieve the government's objectives. Selecting the right instrument will depend on the problem to be addressed and the overall policy objective.



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:

- drink-driving advertising campaigns that seek to reduce drink driving rates, and
- home insulation subsidies that seek 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.

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.

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 (prescription).

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.

Alternatively, the government can regulate more 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.

5.1 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[5]. 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[6] 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.

New regulation should not conflict with or duplicate existing legislation or regulations. It is therefore also 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.

6 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 alter the status quo, which option is likely to be the most effective for solving the problem, and which option has the highest net-benefit.

Options analysis should be the fundamental concern of any decision about whether to regulate and in what way. All options analysis must aim to answer:

- How does the option broadly measure up against the objectives? Answering this question may require a full impact analysis of each option.
- What is the net impact (or net benefit or cost) of taking any of the available options?
- What are the distributional implications of the options being considered? Options analysis requires evidence and analysis of who wins and who loses—and by how much.

The options analysis should structure the analysis on the different elements of the problem. This may require identifying the particular decision-points and different policy tools within an option that might address discrete elements of the broader problem. This requires an appropriate framework for analysis.

Where the problem is related to particular risks, these should have been clearly identified. The options should describe how those risks would be:

- voluntarily accepted by those bearing the consequences of any risk, eg, requiring participants to sign waivers of liability
- transferred to other parties, eg, making certain parties liable for consequences of their actions (such as advice to uninformed clients)

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5 If there is a preferred option, the greatest effort should go towards analysing this, and the second-most preferred option.

6 Multi-criteria analysis is a way of appraising and ranking policy options against a given set of objectives or criteria. It is not an alternative to cost benefit analysis since it evaluates options' likely effectiveness in achieving the objectives—rather than the overall efficiency from a New Zealand net-public benefits perspective.

- mitigated (reduced in likelihood or consequence), eg, by mandating safety equipment to minimise the injuries that could be sustained, or
- avoided, eg, prohibiting the activity which could lead to the risk.

6.1 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 direct and indirect (flow-on) effects; one-off and recurring or on-going impacts. RIA needs to identify whether an option would increase or decrease the net-benefit to society compared with the status quo.

Discrete impacts should be separately described and accounted for:

- **Economic impacts** include the dynamic effects on overall welfare and reflect changes to overall production and consumption. They are relevant to gauging overall efficiency by considering whether the behaviour of consumers, business, and the community might be:

  a) Altered positively to achieve the RIA objectives or create other net-benefits to society, or

  b) Distorted with negative consequences—creating opportunity costs. Welfare losses can arise from regulation which impairs competition, stifles innovation, artificially constrains pricing or valuation decisions, or generally restrains the economic activity of individuals and firms (eg, by distracting people from more productive endeavours).

- **Fiscal costs** are borne by public agencies (and ultimately, the taxpayer) in administering the regulation or law. They include the costs of implementation, formulating standards, monitoring and enforcing compliance, and adjudicating disputes or administering appeals.
- **Compliance costs** are the direct costs that regulated parties will face in order to comply with regulatory options. They include the cost of collecting and reporting information, equipment purchases and the development of new processes and reporting systems.

Compliance costs are usually the most prominent and identifiable impacts. However, while they may affect individual or group behaviour, compliance costs may be less significant from a net economic benefit (society-wide) point of view. Cost estimates in options analysis are likely to be subject to assumptions about how regulatory options might be implemented or how businesses might choose to comply.

Consideration should be given to ways in which costs, particularly compliance costs, may be reduced or minimised. There may be trade-offs between compliance costs and the administrative costs to government—these should be explicitly identified. For instance, greater flexibility in the ways regulated parties could comply with regulatory requirements may minimise their costs, but may increase the costs of administering the regulation. The key informational requirements are set out in the following box.

Key informational requirements for identifying compliance impacts

The specific costs on regulated and third parties should be separately identified from fiscal and wider economic impacts of regulation and should be tested with affected parties through consultation. RIA aims to make agency assessments of compliance cost impacts more transparent by identifying:

- One-off costs, such as acquiring sufficient knowledge to meet the regulatory obligations, retooling production processes, purchasing or leasing additional equipment and buildings, legal/consultancy fees and training expenses.
- Recurring and ongoing costs, such as staff costs or time, consumable materials, inspection fees/licences, costs imposed by enforcement processes, form filing (that is, costs arising from the need to devote additional time and resources to satisfying regulatory requirements).
- The parties likely to be affected. If the costs will be borne by businesses, the sector and sizes of firms should be identified to give an indication of magnitude.
- An assessment of the risks or uncertainties associated with cost estimates.
- Overlapping compliance requirements with other agencies or regulatory regimes. It may be possible to design compliance processes so that information is shared between two related compliance processes.

6.2 Analyse the incidence of impacts

The incidence of the impacts of each option also needs to be assessed, that is, what would happen as a result of each option and who would be affected. While it may be appropriate to consider ‘who’ before ‘what’ or ‘how’, both the impacts and their incidence should be identified **before** the individual impacts are valued to determine net-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 (including relevant contractors and sub-contractors)
- businesses (including those upstream and downstream in the supply chain)
- 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
- 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.

Assessing the impact of options on different parties should consider the competition effects—this may be done explicitly in evaluating an option against a policy objective (to 'promote competition' for instance), or as part of the analysis of who bears or receives costs and benefits. If an option is likely to have effects on competition, the RIA should consider (and the RIS should summarise) the impacts on:

- **Incumbent Firms**—Will the option (eg, a proposed regulatory tool) affect companies differently, for example altering competitive relationships between them in a way that it will reduce competition in the market as a whole?
- **Entry of new firms**—Will the option restrict the entry of new firms? Will it affect competition in the long term?
- **Prices and production**—Will the option put upward pressure on prices by imposing new costs to producers?
- **Quality and variety of products and services**—Does the option include minimum standards that will reduce the range of price or performance combinations in the market?
- **Market growth**—Will the option affect the potential for parties, or the number of parties, to expand supply and meet more demand over time?
- **Related Markets**—Does the option affect related markets? That is, does it have effects on the production line?

6.3 Analyse the magnitude of impacts—and whether they are costs or benefits

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 multiplied by the 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 fully 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.

Net impacts may not be easily expressed as monetary values, but the impact analysis should attempt to conclude what the **net** benefit (or cost) of each option is. Put simply, the net benefit (or cost) is the difference between total costs and total benefits.

In some cases, for example where costs and benefits will occur over many years, it may be helpful to identify a net present value (NPV) of the various options. The NPV is the sum of discounted net cash-flows, 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*.[7]

It is crucial when evaluating net-impacts of each option to avoid double-counting. Some costs borne by certain businesses may be passed onto consumers, but the impact considered in the CBA should be the first order impact on businesses, rather than the second order impact on consumers. The likely flow-on effect on consumers should be described separately in terms of transfers and distributional implications—not quantitatively added to the business impact. Please see Treasury's CBA Primer for guidance on quantification.

6.4 Risk assessment

RIA requires an assessment of risks alongside agencies' conclusions about the relative merit and likely net benefit of the options. Some important types of risks to consider are set out in the Preliminary Impact and Risk Assessment template (see Annex 1.1).

Risks should be expressed in terms of how exposed each option is to future uncertainty. Some form of sensitivity or scenario analysis should be presented in the RIS. A qualitative description of any risks and uncertainties—particularly for intangible costs and benefits—should also be given.

Risks should be identified for each of the affected parties. These might include the likelihood of compliance or of expected costs or benefit actually accruing. It might not be possible to estimate this probability with much precision—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.

Presenting the Impact Analysis

Separate rows or detailed descriptions in the body of the RIS' option analysis may be required to summarise how the different costs and benefits are borne by which parties. There are multiple possible tables that could be used to present the analysis, but below is one example:

Party	Benefits	Costs	Net impact	Risks *(and likely effect on impacts)*
Party 1	+	-	+/-	*Describe*
Party 2	+	-	+/-	*Describe*
Party 3, etc...	+	-	+/-	*Describe*
Total (net NZ)	*Total benefits*	*Total costs*	*Net NZ welfare*	*Likelihood of net impact*

7 The Cost-Benefit Analysis Primer can be found online at: http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis/primer

An alternative way of presenting risks or uncertainties may include expressing net impacts as adjusted by a probability value. Expected values are calculated by multiplying the magnitude of an impact by the probability that it will actually be revealed. This may be a useful way of incorporating risks into the options analysis and is ideal where there is good quantitative evidence of potential impacts.

Where it is difficult to be precise about probabilities, colour-coding has previously been effective to show how confident an Agency is about projected impacts in an options analysis table.

The specific costs, benefits, and risks may be difficult to identify, and could be more accurately described as positive or negative 'impacts'. Where this is the case, the relative effectiveness of alternative options may need to be assessed in terms of how parties' behaviour might change. Incentive analysis is one method of comparing each option with the status quo. A simple framework is presented as an example below. This is another way of describing particular impacts (in this case behaviour)—but note that it may not be useful for capturing the total or net effects of an option.

	Incentive under Status Quo		Incentive under Option 1 (etc...)	
	Current Behaviour	Why?	Likely Behaviour	Why?
Party 1				
Party 2				
Etc…				

7 Consultation

The purpose of consultation is to provide confidence about the workability of proposals and that options have been properly considered. This section covers the basic process requirements for RIA consultation—see *Effective Consultation* (Part 3) for general guidance.

To meet the RIA requirements, agencies proposing new regulation must demonstrate consultation with affected parties on the problem definition, the range of feasible options, and the impacts of the options. Consultation can be inadequate for a number of reasons, including:

- when affected or interested parties are not consulted (eg, not consulted at all or unrepresentative consultation, such as where only large organisations are consulted), and
- when consultation processes are ineffective (eg, consulted parties not given enough time to respond, important issues not consulted on, consultation documents not promoted widely enough).

The magnitude of the proposal, including who is likely to be affected determines who and how to consult—more consultation is required if the proposal has wide-reaching impacts.

In most cases, and particularly for significant proposals, there should have been material consultation before the RIS is drafted. The draft RIS nevertheless provides another vital basis for consultation, both with affected parties and with government agencies. The RIS format (which follows the RIA framework) also provides a useful vehicle for providing advice to the portfolio Minister, during the course of policy development.

The draft RIS should therefore 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.

7.1 Who to consult

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.

For guidance on which departments require consultation on particular issues, see this CabGuide section on consultation with government agencies[8]. It does not provide a complete list of consultation requirements, but is intended to assist officials in identifying the departments they should consult.

For regulatory proposals, key government agencies to consult (as well as the relevant Treasury policy team) include the following:

- The **Ministry of Justice** (MoJ) is responsible for vetting proposals for consistency with the New Zealand Bill of Rights Act 1990, MoJ must also be consulted on proposals that potentially create or alter criminal offences, sanctions, or penalties.
- 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.

- The **Ministry of Business, Innovation and Employment** (MBIE) should be consulted on proposals that may impact on businesses, particularly those that impose compliance costs and direct costs. MBIE should also be consulted on regulatory proposals that have Trans-Tasman Mutual Recognition Agreement (TTMRA) implications.

  The TTMRA is a horizontal arrangement that impacts on a wide range of non-specified areas and is predicated on a number of principles, including comprehensiveness (there should be limited exceptions) and mutual recognition principles (as opposed to *harmonisation* principles). Judgments need to be taken on a case by case basis taking into account both trans-Tasman and domestic factors. Judgments should also be informed by the RIA requirements (as required by the Council of Australian Government (COAG) Principles and Guidelines for National Standard Setting and Regulatory Action).

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8 http://cabguide.cabinetoffice.govt.nz/procedures/consultation

- For matters relating to **local government**, or potential regulatory options that may be implemented or enforced by local government agencies, please refer to the Department of Internal Affairs' Guidelines for which entities to engage with directly.

8 Conclusions and recommendations

It is crucial for RIA, and particularly for the summary of the analysis in the RIS, to clearly explain what decisions are required, what choices are available, and what stage of the policy process the RIA reflects. Failing to clearly articulate the difference between the status quo and the outcome that is being presented via the Cabinet recommendations (either the preferred option or any of the alternatives) will limit the transparency of the RIA.

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.

The usual methods of presenting convincing options analysis in a RIS to meet the RIA requirements include:

- cost-benefit analysis (CBA) if feasible—an assessment of net-benefits including quantitatively, and if necessary qualitatively, estimated impacts (see Treasury's *Cost-Benefit Analysis Primer*)
- cost-effectiveness analysis, if feasible—to determine the least cost method of achieving a policy objective or standard, and
- incentive analysis—if an option's design is intended to change the behaviour of certain groups.

Any conclusions regarding the impacts of different options should ideally be expressed in terms of net present values (NPVs) over a reasonable time-horizon. Any weighting of risks should also 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).

The OECD Introductory Handbook for Undertaking RIA contains greater detail about these methods[9]. In each case, the aim is to compare the likely situation under the status quo with each option and conclude which option is preferred according to the objectives and a judgement about net-benefits. While there should be enough impact analysis to be able to compare options, a greater level of effort should go into analysing the impacts of the preferred option and the recommendation in the Cabinet paper (which may be different).

9 Available online at: http://www.oecd.org/gov/regulatory-policy/44789472.pdf

It is unlikely that a RIS or discussion document can meet the RIA requirements if no clear methodology for assessing options has been explained, or if the analysis has not been articulated convincingly to inform decisions.

Presenting a summary of the options analysis

There are multiple ways of summarising the RIA in a RIS and the presentation should be tailored to how the option has been described. For example, different parts of the problem and option may need to be described separately. A conclusion about the preferred option is not always required or possible, but the RIS requires at least a brief, clear statement to summarise options and set out the evidence base on which a decision would rest on.

A simple table can be a useful way to organise the options, structure the summary of the options analysis, and describe the net-benefits (efficiency) alongside the options' ability to achieve the stated policy objectives (effectiveness). This is just one of many potential example tables for summarising the results of RIA.

Options	Objectives	Impacts		Overall Assessment
	Are they met? How?	Net Effects	Risks	*Preferred? Why?*
Option 1	Describe	+/-	Describe	Describe
Option 2	Describe	+/-	Describe	Describe
Option 3	Describe	+/-	Describe	Describe

9 Implementation

RIA requires consideration of how the preferred option would be implemented if agreed. If the option being presented to Cabinet is different, the RIA should also include consideration of how that option could be implemented.

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). Significant 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.

RIA should cover the entire implementation and enforcement stages of the policy by describing the impact of different choices around enforcement strategy on costs and benefits (expected compliance and effectiveness). Consideration should also be given as to how enforcement costs will be funded—although the appropriate level of analysis of implementation will depend on the stage of the policy development process and the magnitude of impact.

It is therefore important to consider some practical implementation issues before key policy and design choices are taken. To the extent that implementation design issues are not covered in the description and analysis of options and impacts, specific implementation considerations include:

- **Administration** issues, such as which agency will implement and administer the option and how it will function.

- **Timing and transitional arrangements** eg, delayed or gradual introduction of new requirements, provision of interim assistance.
- **Compliance costs minimisation strategies**. What implementation strategies will be required, such as an education campaign, the use of electronic technology, form design, advisory services and testing with stakeholders? Is there existing regulation that can be reduced or removed to prevent overlap?
- **Implementation risks** and their potential impact on the effectiveness of an option. Strategies for mitigating these risks should be explained.
- **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 or methods of communication).
- **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.

RIA also needs to establish plans for oversight and operational safeguards. Who could (and who will) be best placed to make informed judgements about the operation of the regulatory regime, the enforcement of rules, and the performance of the regulator? These may not be the same groups, but all affected parties should be considered for their likely interest and exposure to regulator discretion and behaviour

The plans for how stakeholders are expected to continue engaging with agencies should also be clearly articulated so that stakeholders can have an indication of likely compliance costs. Imposing information and reporting requirements can create costs that are difficult to quantify without information from affected parties through consultation.

It is important that Agencies strike the right balance between collecting the necessary information to meet their responsibilities to the public, while not requiring information that is unnecessary or unavailable. Agencies and relevant regulators should only collect information essential for enforcing rules or monitoring regulatory objectives and behaviour. They should also ensure that processes are in place to only collect information once—not multiple times redundantly.

The Department of Internal Affairs (DIA) has published *Achieving Compliance - A Guide for Compliance Agencies in New Zealand* which contains more detail about implementing policies.

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:

1 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.

2 Regulated entities are not homogenous. 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?

10 Monitoring, evaluation and review

RIA must establish the agency's plans for monitoring, evaluating, and reviewing the performance over time. The key questions are:

- How will the Agency determine when and whether the regulatory changes have performed well?
- How will the Agency assess whether the preferred option continues to have a greater net-benefit than alternatives?

While the plans for monitoring the implementation of the preferred option should be summarised in the RIS, it is also important that any new regulation is monitored and periodically reviewed to evaluate whether the option is the preferred solution to the particular policy problem over time. Such monitoring and evaluation helps to ensure that new regulations 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 is expected to 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 also be made for how and when the regulation will be reviewed. Agencies should consider committing to a periodic review of particular regulatory interventions, either through a sunset-review clause in the regulation itself, or through committing to collect and monitor information for evaluating regulatory performance. Reviews should be reported and consulted on with a view to ensuring regulation remains fit for purpose.

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?

Part 3: Effective Consultation

This section provides guidance on how to conduct effective consultation and tips for producing meaningful, clear discussion documents, for regulatory proposals.

1 The purpose and implications of consultation

The purpose of consultation is two-fold: to gain information to assist with policy development; and to inform stakeholders about what's happening. This section contains explains the key features of effective and efficient consultation, and provides general guidance for preparing discussion documents that meet the Regulatory Impact Analysis (RIA) requirements.

1.1 The value of consultation to good RIA

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).

1.2 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.

1.3 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.

Features of efficient and effective consultation	
Continuous	Undertaken throughout policy development process.
Timely	Realistic timeframes for stakeholders to respond. Undertaken early enough to have an impact on policy design.
Targeted	Need to consult relevant groups, including Māori.
Appropriate and accessible	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.
Transparent	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).
Clear	Consultation scope and objectives (including decisions already made) should be clear to stakeholders.
Co-ordinated	To the extent possible, processes should be co-ordinated across policy areas/sectors.

2 Preparing consultation material

This guidance for preparing discussion documents follows the same framework as the general RIA guidance in the previous section, but it is directed at eliciting good quality feedback from respondents through targeted questions in consultation material.

The quality of a discussion document will affect not just subsequent policy work and decision-making, but also the public's trust in officials to provide good policy advice based on reliable evidence. Consultation from a discussion document can and often will be the richest source of information and ideas available to officials in the course of policy development. They can start or challenge policy debates and, more importantly, they can provide officials with an opportunity to test analysis and to collect information to assess the likely impacts of alternative policy and regulatory options.

A discussion document should outline any (preliminary) conclusions from previous consultation exercises. If there has been substantial prior consultation (eg, workshops, international meetings etc.), then respondents should be advised and the outcomes summarised.

Using the RIA framework in structuring discussion documents should help to ensure that they provide a clear articulation of proposed regulatory changes to stakeholders, experts and the general public. Where there is potential for significant regulatory proposals, the Regulatory Impact Analysis Team (RIAT) must be provided with draft consultation material for comment before publication, but RIAT does not provide formal QA of discussion documents. This is the responsibility of agencies themselves.

The RIA requirements apply to discussion documents that include options that may lead to legislative or regulatory changes, and where Cabinet approval is sought for the release of the document. However, unless options are being narrowed down for consultation, there is no formal Cabinet requirement for independent quality assurance of discussion documents. Where explicit decisions are being sought in order to narrow down the options presented in a discussion document, then a RIS is required for those decisions.

As set out above, the RIS that accompanies final policy proposals will be assessed against the RIA quality assurance criteria. The quality of the consultation via a discussion document will therefore weigh heavily in this assessment.

2.1 How are RISs and discussion documents different?

A RIS is the department's document, but a discussion document need not be—discussion documents can be issued in the name of Ministers. Because a discussion document may be issued by a Minister, it does not require an Agency Disclosure Statement (ADS). It will, however, be necessary to discuss in the document any gaps in information or any limitations on the scope of potential policy decisions. It may therefore be important to make explicit any matters on which submissions are specifically not invited

A RIS is not an advocacy document—but a discussion document can be. A RIS should be officials' best advice on impacts, presented dispassionately and without prejudice. A discussion document, on the other hand, can (and sometimes ought to) be more provocative, more leading.

If assertions are used to justify particular positions or analysis in a discussion document, it is important that respondents are explicitly invited to challenge the assumptions, analysis and conclusions supporting the options being advocated. These submissions and challenges should be received and considered in good faith. The major feedback from consultation, and the Agency's responses, should be summarised in the RIS that accompanies final Cabinet in-principle recommendations.

Depending on the intended audience, a discussion document can be more or less technical than a RIS. A RIS should be written for an informed, but non-expert decision-maker. By default, RIAT recommends that discussion documents be pitched at around the same level, unless the intended audience is:

- Broader, in which case respondents might need a more basic introduction to the policy question being discussed, or
- Narrower (say, a small population of experts), in which case respondents are likely to possess some degree of technical knowledge.

2.2 Questions that work

Questions should serve at least two functions: to invite challenge and to improve information. The best discussion documents keep questions as open as possible but are explicit about what is being sought.

Ideally, questions appear immediately after any assertion or hypothesis that can be challenged or augmented, and officials' analytical frameworks may be summarised with a flow chart linking key questions and decision points to the different stages in the policy process. For longer documents, it might be useful to also include a consolidated list of question (eg, as an appendix), so that it is clear which parts of the document the individual questions relate to.

The rest of this section is structured to follow a general RIA framework, as found in a RIS. Each section concludes with some recommended questions.

2.3 What is a good description of the status quo for a discussion document?

A good discussion document should include a description of the current arrangements and how they are likely to evolve without further regulatory change. In other words, document should outline a base case (or a 'do-nothing' scenario) that says, "Suppose we took none of the regulatory options considered here: what would happen?"

Examples of possible questions for the status quo section:

- Do you agree with this characterisation of the status quo? If not, please provide evidence to support your views.
- How would you describe the status quo? What other factors should be considered?

2.4 Problem definitions in discussion documents

The problem definition needs to do more than identify the gap: it should discuss its size and importance. If uncertain about the reality or size of the problem, Agencies should use questions to test thinking:

- Do you agree with this characterisation of the problem? If not, why not?
- In your view, what are the problems with the current regulatory settings?
- How important are these problems?
- How important are they to the New Zealand public?
- What are the consequences of continuing to follow (or not follow) international practice in terms of New Zealand's public interests?
- What evidence should we examine to inform further analysis of the problems?

2.5 Objectives

The objectives should be clear and should have the potential to be observable; stating what evidence would suggest a particular objective or desired outcome had been achieved. Following a clear statement of the relevant objectives, a discussion document should ask:

- Have we identified the correct objectives?
- What objectives should we use to assess and rank options?

2.6 Identifying options

A RIS and a discussion document that incorporates RIA should include a representative range of feasible options. There might be an infinite range of feasible options, but there is no need to include every single possible variation. Unless past decisions limit the set of options that can be consulted on, a discussion document should identify and describe at least:

- the status quo scenario projected forward—where no further regulatory changes occur (behaviour may still be expected to change over time)
- one or more non-regulatory options (eg, education, industry self-regulation), and
- one or more regulatory options, including what would happen without regulation (if different from the status quo).

If deliberately excluding feasible options, or options that respondents are likely to think are feasible, this section should explain why.

A consultation document that only requests feedback on a particular set of options without considering alternatives (sometimes referred to as a 'white paper') is unlikely to meet the RIA requirements—unless a good quality RIS is annexed to the paper for consultation.

Questions about the identification of options could include:

- Do you agree that these are the correct options to consider? If not, why not?
- What options should we consider to solve the problem (either as identified in this document, or as you identify the problem)?
- Please suggest options not discussed here. Of the options discussed, please say which options should not be considered. In both cases, please explain why.

2.7 Options analysis

The questions for discussion documents may depend on the quality and quantity of evidence gathered so far—agencies may have limited information at the consultation stage of a policy process and should be open about that. Respondents may be aware of impacts that officials and decision-makers might not appreciate.

Discussion documents should set out agencies' preliminary views on impacts (costs, benefits, likely behavioural changes, and risks) and attempt to get better information from stakeholders. Consultation should seek sources of information, identification of other parties potentially affected by options (including an indication of likely winners and losers), valuation methods and views on whether there are any other matters that may not have been considered appropriately.

Consultation questions should test agencies' consideration of options and impacts. Consultation for good quality RIA should aim at assessing the likelihood of the impacts being revealed—including probabilities and the projected net-benefit values of best- and worst-case scenarios.

- Do you agree with the impact analysis of this option (or these options)? If not, why not? Please provide evidence to support your answer.
- What are the impacts of this option? It is usually best to ask about impacts and risks option-by-option.
- How should we value these impacts?
- What impacts are not included here?
- What is the net impact of this option?
- How likely is it that this option could result in greater benefits than those discussed here? How likely is it that this option could result in greater costs than those discussed here? What do you think is the likely best- and worst-case scenario?
- Who gains from this option and by how much? Who loses and by how much?
- What sources of information should we use to assess expected costs and benefits and to assess risks?

2.8 Implementation

Stakeholders who are more closely engaged with or affected by the government agency that enforces or monitors the status quo will have an interest in next steps, and may be able to advise whether the options are actually able to be implemented as envisaged by agencies. The plans for implementation should be clearly articulated so that stakeholders can have an indication of whether plans will be effective and whether the timeframes are achievable.

Questions might include:

- Do you agree with the proposed implementation and monitoring arrangements? If not, please provide evidence to support your view.
- How should the proposal considered in this document be implemented and monitored?

2.9 Monitoring, evaluation and review

The plans for on-going monitoring, evaluation, and review should be presented to stakeholders early—even if they are likely to be administered in the same way as other operational policies by the Agency. Some of the information will come from stakeholders who are more closely engaged with or affected by the government agency that enforces or monitors the status quo. The plans for how stakeholders are expected to continue engaging with agencies should be clearly articulated so that stakeholders can have an indication of likely compliance costs.

Useful questions might include:

- Do you agree with the proposed monitoring arrangements? If not, please support your view.
- How should the proposal considered in this document be monitored?
- What should be monitored? To whom should results be reported?

3 Discussion documents must be clear

A RIS that meets the RIA requirements will be clear and concise—a discussion document may require more detailed information but it should still be clear and concise. The language and presentation of the discussion document should be informed by the prior knowledge of the parties being targeted for consultation. Discussion documents that are long and difficult to read will not aid effective consultation.

We recommend planning for internal or external independent reviewing of discussion documents. Independent reviewers can be highly effective where they are not subject experts, and may be able to identify ways to adjust a document to better seek a wide range of submissions.

Part 4: The RIS Process

This section describes the steps involved in putting together a Regulatory Impact Statement (RIS), from the template to the publication process—including obtaining independent quality assurance (QA) and providing the RIS to Cabinet.

1 Preparing a Regulatory Impact Statement (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.

1.1 Required information

The RIS must contain the following information:

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

- options and 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 plans, including risks, and
- arrangements for monitoring, evaluation and review.

A preferred option may be identified and discussed, but this is optional. Similarly, while the RIS needs to cover the policy problem being addressed, it is not required for the preferred option in the RIS to be reflected in the Cabinet paper (for instance if the Cabinet recommendation diverges from the Agency's advice). However, if possible the RIS should address the potential impacts of the recommendation in the Cabinet Paper alongside the alternative feasible options.

If the RIS does not cover options that form recommendations in the Cabinet Paper, the Agency Disclosure Statement should outline these options and explain why they do not form part of the RIA.

The required information, and a suggested template, is set out in more detail in Annex 4.1.

1.2 Agency Disclosure statement

The agency is required to complete an agency disclosure statement (ADS) 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, 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. This is different from the disclosure requirements described on page 3.

The ADS needs to identify gaps or constraints in the analysis and briefly identified the proxies used to fill these gaps, or the assumptions to overcome the constraints. This should give the reader an accurate sense of the level of analysis conducted in the RIS and give Cabinet (as the ultimate decision-maker) an appreciation of the level of reliance that can be placed on that analysis.

The ADS should not be an executive summary of the RIS and should not present detailed background—it should focus on constraints or the analysis and signal any major impacts that might pose risks. If timing or previous decisions have constrained analysis, the reasons or previous decisions and RISs should be clearly but briefly explained.

1.3 RISs for in-principle or intermediate policy decisions

As noted in *When so the RIA requirements apply?* (see Part 1), 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.

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.

1.4 Consultation and circulation

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.

2 Obtaining Quality Assurance (QA)

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.

2.1 Independent quality assurance

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 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, but on the quality of the RIS. The quality assurance should be undertaken before final advice is provided to the portfolio Minister.

2.2 Early warning

Ministers have expressed a strong preference for early warning where a significant RIS or discussion document is unlikely to meet the RIA requirements and where a RIS is required but will not be prepared.

Early warning is the primary responsibility of the agency responsible for preparing the RIS or discussion document, and needs to be given sufficient priority by agency officials. Further, for any significant RIS or discussion document that has not met, or in the view of the RIA team is unlikely to meet the RIA requirements, Treasury may advise the Minister of Finance and the Minister for Regulatory Reform, including whether these Ministers could usefully bring any issues to the attention of the portfolio Minister or other colleagues.

2.3 QA criteria

The QA criteria (see Part 5) 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 (see Annex 4.1) 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. The *Undertaking RIA* (see Part 2) section of the Handbook should be used as a guide to assessment against this dimension of quality.
- **Consulted**—The *Effective Consultation* section (see Part 3) of the Handbook sets out the requirements for 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.

More guidance on applying the QA criteria can be found on in the section *Providing QA*. They should be used in conjunction with the overview of required information (see Annex 4.1) for the RIS and the guidance on impact analysis (see Part 2) provided in this handbook, including consultation (see Part 3) requirements.

2.4 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.

- 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 be will 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).

2.5 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 a RIS was required but not prepared, or
- for which the RIA (as summarised in the RIS) is deficient.

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

For proposals that only partially meet the RIA requirements, reasons should be given in the Cabinet paper to explain the key deficiencies and risks for Cabinet's decision.

2.6 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.

2.7 Further guidance

More detailed advice on undertaking independent quality assurance is provided in Part 5.

3 Preparing the Cabinet paper

While the RIS is a document produced by an agency summarising its analysis of an identified problem, the associated Cabinet paper is usually written from the perspective of a Minister.

All Cabinet papers must include a section entitled **Regulatory Impact Analysis** to link the two documents. This section includes the following information.

- Statement explaining whether the RIA requirements apply to the proposal or any alternative options in the paper which Ministers may select, and if not, the specific exemption being claimed.
- Whether a RIS has been prepared and attached to the Cabinet paper, and if not, the reasons why.
- An independent government agency opinion on the quality of the analysis which states the following:

  "[**Name of team or position of person[10] 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*]."

Ministers no longer need to certify in the Cabinet paper that proposals are consistent with the 2009 Government Statement on Regulation.

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[10] 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).

4 Publishing the RIS

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

RISs must be published on the lead Agency's **and** Treasury's websites, and the URLs to the location of the RIS must be included in the Explanatory Note to any Bill, Supplementary Order Paper (SOP), or regulations for which a RIS was prepared.

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, SOP, or regulations. Agencies must ensure that these are supplied in sufficient time to enable them to be included in the copies of the draft Bill, SOP, or regulations that are printed for submission to the Cabinet Legislation Committee (LEG).

4.1 Withholding sensitive or confidential information

Deletions can be made from published versions of RISs, consistent with the provisions of the Official Information Act 1982.

4.2 Timing of publication

Publication is required at the time:

- any resulting Bill is introduced into the House or Supplementary Order Paper is released
- 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, for example with the press statement announcing any new policy for which a RIS is required.

4.3 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. The RIS on agency websites must comply with the New Zealand Government Web Standards and Recommendations, which are available at https://webtoolkit.govt.nz/.

Agencies must keep Treasury informed (via 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.

Forty printed copies of the RIS must also be provided to the Bills Office. See http://www.pco.parliament.govt.nz/ris-guidance/.

Select committee clerks will include relevant RISs in the material provided to Select Committees on Bills referred to that Committee.

Annex 4.1
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. Unless very short, RISs should include an executive summary (for example with a summary table of the 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 in one sentence what problem the options in this paper seek to address].

[Paragraphs describing the nature and extent of the analysis undertaken, explicitly noting:

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

[Please note that the Agency Disclosure Statement should address the reliance that decision-makers may place on the analysis. It should not be an executive summary of the RIS.]

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

[*Signature of person*] [*Date*]

Executive summary

- A short outline of the RIS and key conclusions—preferably in less than one page.

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.

Options and 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) and assess the net benefit compared with the status quo.

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 plan

- 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).

Part 5: Providing Quality Assurance (QA)

This section contains advice on providing independent quality assurance (QA) of Regulatory Impact Statements (RISs). It is aimed at people who are asked to provide feedback on the quality of a RIS, and those providing the independent QA. This guidance should be read in conjunction with the rest of *the Handbook*.

1 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.

Cabinet requires that independent quality assurance (QA) is undertaken on all Regulatory Impact Statements (RISs).[11] If any of the options considered in the RIS are likely to have a significant impact or risk (see Part 1), 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.

1.1 The QA criteria

The QA criteria (see Annex 5.2) 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 (see Annex 5.1) 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. The *Undertaking RIA* section (Part 2) of the Handbook should be used as a guide to assessment against this dimension of quality.
- **Consulted**—The *Effective Consultation* section (see Part 3) of the Handbook sets out the requirements for 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

11 Refer CAB Min (09) 27/11, CAB Min (09) 38/7A.

views expressed by stakeholders, and how these have been taken into account in the development of the final proposal.

- **Clear and Concise** – The final criterion 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.

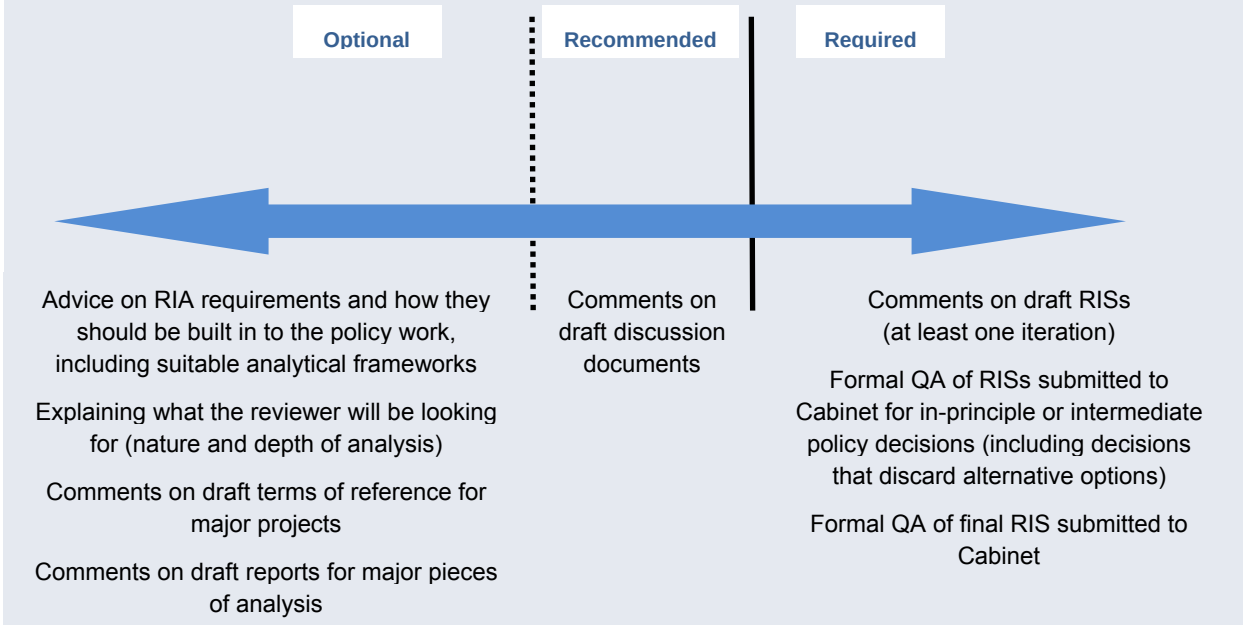
More guidance on applying the QA criteria can be found below.

2 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 the box 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.

Degree of QA involvement



2.1 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.

2.2 Discussion documents (recommended)

The RIA requirements apply to discussion documents that contain options that may lead to legislative or regulatory change. There is no formal assessment requirement for discussion documents, and reviewers are therefore not mandated to provide a QA statement comment in the Cabinet paper.

However, 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. QA of consultation material reduces the likelihood of a proposal failing to meet the RIA requirements at the RIS stage.

The focus of comments should therefore be on whether the document is adequately structured around the RIA framework, and whether there are suitable questions for stakeholders. In providing comments on draft documents, reviewers should refer to the guidance on Effective Consultation.

2.3 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.[12] 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.

2.4 Providing comments and advice

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 include:

- 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 (eg, 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.

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[12] 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 to the PIRA section of the *RIA Handbook* for details).

2.6 Providing final QA

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, 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.

Applying the QA criteria

The criteria for assessing the RIS are the same regardless of whether the QA is provided by RIAT or the agency. 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.

In reviewing a RIS, the QA criteria should be applied to each element of the RIA framework. The matrix on the following page outlines some of the questions that should be asked by a reviewer of each section of the RIS. A potential format for providing feedback is given in Annex 5.1. Example QA Template.

Considering 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 (eg, 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, whether it was reasonably possible to overcome it and whether the significance of the constraint is such that it impairs the ability of Cabinet to fully rely on the analysis in the RIS for its decision making.

For instance, a genuine analytical constraint may exist when there are no existing data eg, on the scale of the policy problem (and it is simply not possible to obtain or gather such data). There are two possible ways in which this situation can be handled:

- the RIS would note the uncertainty and risks this raises, and the QA opinion could be **subject to** the constraint, or
- the QA opinion might determine that the RIS does not meet the “convincing” criterion, but note that these deficiencies have been identified.

There is a “line” between these two forms of QA statement and it is a matter of judgement on a case-by-case basis to discern where the line is.

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 reviewer (whether RIAT or the agency) must provide a formal opinion on the quality of the analysis for inclusion in the Regulatory Impact Analysis section of the Cabinet paper. The QA statement needs to:

- state whether the reviewer considers that the information and analysis summarised in the RIS meets/does not meet/partially meets the quality assurance criteria, and
- comment on any issues that have been identified in relation to any of the dimensions of quality set out in the QA 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 (eg, 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 (eg, 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.

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 (eg, additional, targeted consultation).

Template statement

Some illustrative examples are provided in Annex 5.3. Illustrative QA statements. A template is also provided in the box below.

Overall opinion on quality of analysis

The overall opinion is to be included in the Cabinet paper under the heading *Regulatory 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.*]"

Note: Comments should be included where a RIS has been assessed as not meeting, or only partially meeting, the RIA requirements.

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 (eg, 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.

3 Moderation and review

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

3.1 Moderation arrangements

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

- having centralised oversight of all QA assessments (eg, 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 (ie, particular policy areas) so that they are not always reviewed by the same person.

3.2 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.[13] 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.

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.

4 Establishing a QA process

4.1 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—a mix of options may be appropriate for different proposals or policy projects.

	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 (eg, from other agencies) Can contribute to RIA awareness raising/agency capability building and expertise	Eg, 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, eg, how to take account of unforeseen changes in the policy process, allowing for iterations

[13] 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.

4.2 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.[14]

4.3 Implementing the process

- The QA process should be integrated into an agency's policy development and Cabinet paper submission process. Agencies may elect to 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 (ie, 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 (eg, 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 wish to consider the process by which these situations will be managed (ie, identifying the responsible senior management and how they will provide support to the reviewer).

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[14] 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).

5 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.

Annex 5.1 QA questions and expectations

QA Criteria	Agency Disclosure Statement	Status Quo & Problem	Objectives	Options Analysis	Implementation & Monitoring
Complete	**Does the ADS indicate how much confidence decision-makers should have in the RIS?** ▪ Does the ADS briefly describe the nature and extent of the analysis undertaken, noting any limitations? ▪ Are all risks covered? ▪ Does the ADS identify any serious impacts of the preferred options? ▪ Have all serious impacts identified in the ADS been analysed in the RIS? ▪ Do any of the limitations noted in the ADS impact on the analysis in the RIS? - Noting limitations to the RIA in the ADS does not automatically alter the standard for QA. ▪ Is the structure of the ADS clear? Are the issues prioritised?	**Is a problem identified and explained?** ▪ Describe the key features of the current situation (including any existing legislation, regulations, and relevant features of the market). ▪ Explain relevant decisions that have already been made. ▪ Identify the problem, and describe the costs and benefits under the status quo (ie, the outcomes expected without intervention).	**Do the objectives describe the desired outcome?** ▪ Identify relevant policy objectives in addition to the purpose of the RIS. ▪ State whether any constraints exists, such as time or budget	**Are all possible options identified and described?** ▪ Identify the full range of practical options (regulatory and non-regulatory) that may wholly or partly achieve the objectives. ▪ Within any regulatory options, identify the full (viable) range of regulatory responses, including the range of settings that could be adopted	**Is an implementation path identified and explained?** ▪ Summarise how the preferred option(s) will be given effect, including timing, communication, transitional arrangements, and any enforcement strategies. ▪ Outline plans for monitoring and evaluating the preferred option, including performance indicators and how the necessary data will be collected
Convincing		**Does the problem need to be addressed?** ▪ Describe the scope of the problem and its impacts. ▪ Identify the root cause of the problem (not just the symptoms). ▪ Demonstrate the scale of the problem using empirical or anecdotal evidence.	**Will the objectives identify the best option?** ▪ Identify any potential trade-offs between the objectives. ▪ Explain the Government's desired outcomes in the context of the problem, while ensuring specificity does not unduly limit the range of options.	**Has the best option been selected?** ▪ Evaluate the options against the objectives, ensuring the analysis is commensurate with the size and complexity of the problem, the magnitude of the impacts, and risks. ▪ Identify costs and benefits under preferred option(s) for stakeholders. ▪ Compare options against consistent criteria.	**Is the implementation path realistic?** ▪ Identify any implementation risks, and describe how these risks will be mitigated. ▪ Describe how the proposal would interact with, or impact on, existing regulation—including scope to reduce or remove any existing regulations. ▪ Explain how the monitoring and evaluation process will identify if any additional changes are needed.
Clear & Concise		**Is the problem clearly described?** ▪ Explain the problem in the context of the status quo. ▪ Use tables and subheadings where appropriate.	**Is it clear how the objectives will be applied?** ▪ Clearly identify hierarchy and any relationships between the objectives.	**Is the analysis of options presented consistently?** ▪ Summarise and present the outcome of the options analysis in a consistent format.	**Are the implications clear for affected parties?** ▪ The information is presented in a clear way for affected parties to understand any resulting implications.
Consulted	▪ Explain who has been consulted and what form the consultation has taken. Summarise key feedback received, with emphasis on any significant concerns raised about the preferred option, and how the proposal has been altered to address these concerns ▪ If there was limited or no consultation undertaken, state the reasons why.				

Annex 5.2 Example QA Template

The following template may be a useful format for providing high-level QA comments. More detailed assistance is likely to require an evaluation of the 'four Cs' QA criteria for each element of the RIA framework.

Dimensions
Complete • Is all the required information (see Annex 5.1) (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? (See Part 2.) • Is 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? (See Part 2.) • 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 (see Part 3) 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:

Annex 5.3 Illustrative QA statements

This section provides some examples of the sort of text that illustrate to Cabinet the independent assessment of RIA quality. Cabinet papers may relate to seeking in-principle or final policy decisions, or decisions to narrow down options for consultation. Formal independent QA of the RIS (and underlying RIA) is required for these papers.

Papers may alternatively seek agreement to release consultation material before options have been narrowed—although a preferred option may be emerging through the agency's analysis. While formal QA is not required for these consultation-stage Cabinet papers, independent review (either from within or external to the agency) is encouraged. A statement by the agency about the independent reviewer's opinion about the quality of the RIA is therefore encouraged, but not expressly required.

Discussion Document—Possible RIA statements for Cabinet papers

The RIA requirements apply to discussion documents that contain options that may lead to legislative or regulatory change. While there is no mandated QA requirement for discussion documents (and so there is no formal requirement for a QA statement in the associated Cabinet paper), it is desirable that QA is provided on draft discussion documents.

QA, and a comment about the quality of the RIA contained in a consultation material, increases the likelihood that a policy project will meet the RIA consultation requirements at the RIS stage. It provides the basis for a good quality RIS at the end of the policy process.

Discussion document appropriately contains the elements of a RIA

The Regulatory Impact Analysis (RIA) requirements apply to this policy work.

While there is no formal requirement to carry out an independent assessment of discussion documents, the **[name of Agency]***'s RIA Panel has nonetheless provided independent quality assurance on the discussion document and considers that it appropriately incorporates the RIA elements.*

A Regulatory Impact Statement will be prepared when Cabinet is invited to make final decisions in relation to these **[options/proposals]***.*

Discussion document does not appropriately contain the elements of a RIA (option A)

The Regulatory Impact Analysis (RIA) requirements apply to this policy work.

While there is no formal requirement to carry out an independent assessment of discussion documents, the ***[name of Agency]****'s RIA Panel has nonetheless provided independent quality assurance on the discussion document and considers that it does not appropriately incorporate the RIA elements.*

This is because ***[eg, not clear what the problem is, policy objectives are unclear, alternative options not presented, not clear how the proposed options will address the problem, etc]****.*

This could be mitigated through ***[additional meetings with stakeholders, further research, etc]****.*

*A Regulatory Impact Statement (RIS) will be prepared when Cabinet is invited to make final decisions in relation to these **[options/proposals]**. However, there is a risk that the RIS might not fully meet the RIA requirements because one of the assessment criteria is the quality of consultation.*

Discussion document does not appropriately contain the elements of a RIA (option B)

There may be cases where an independent party (such as an agency QA panel) was unable to review the final version of the discussion document. This may occur because a Minister was still making changes or because the document was not provided for an independent review.

The Regulatory Impact Analysis (RIA) requirements apply to this policy work.

There is no formal requirement to carry out an independent assessment of discussion documents.

*A Regulatory Impact Statement will be prepared when Cabinet is invited to make final decisions in relation to these **[options/proposals]**.*

Decision-stage RISs—Example RIA statements for Cabinet papers

Formal assessment of the final RIS is a mandatory requirement and represents the reviewer's core role. 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.

QA statements 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.

Partially meets

*The Manager, **[name of Team]** in the **[name of Agency]** has reviewed the RIS prepared by the **[name of Agency]** 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 **[name of Agency]**'s independent RIS review panel has reviewed the RIS prepared jointly by the **[name of Agency]** and the **[name of contributing Agency]**, 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, **[name of Team]** in the **[name of Agency]** 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 **[name of Agency]**'s RIA review panel has reviewed the RIS prepared by the **[name of Agency]** 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, **[name of Team]** has reviewed the RIS prepared by the **[name of Agency]** 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, and
- 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.