



Cabinet Office

CO (09) 8

Circular

10 November 2009

Intended for	All Ministers All Chief Executives Chief Parliamentary Counsel Clerk of the House Senior Private Secretaries Private Secretaries All officials involved in the preparation of Cabinet papers
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Regulatory Impact Analysis Requirements: New Guidance

Introduction

- 1 This circular replaces previous guidance on the Cabinet requirements for regulatory impact analysis (RIA). It reflects Cabinet's decisions in 2009 to enhance the RIA arrangements to ensure that they give effect to the [Government Statement on Regulation](#) and the related changes to the regulatory management system.¹
- 2 The new RIA and quality assurance arrangements apply from 2 November 2009. A step-by-step guide to the new RIA and quality assurance arrangements is attached to the circular as [Annex I](#).
- 3 The main changes are:
 - 3.1 the Regulatory Impact Statement (RIS) is a government agency document prepared before the Cabinet paper, in which the agency provides its best advice on the problem definition, objectives, and identification and analysis of the full range of practical options (but is not required to recommend a preferred policy option);
 - 3.2 the provision of two high-level criteria to guide decisions on whether the RIA Team in the Treasury (RIAT) should independently assess the quality of the agency's RIS;
 - 3.3 the provision of more specific criteria around when it may be appropriate to claim an exemption from the RIA requirements;
 - 3.4 that the Treasury will confirm an agency's assessment of the significant impacts or risks;
 - 3.5 the introduction of a more complete set of quality assurance criteria;

¹ This guidance takes account of changes agreed by Cabinet in 2009 [CAB Min (09) 27/11 and CAB Min (09) 38/7A]. It replaces Cabinet Office Circular CO (07) 3 and Cabinet Office Notice CO (08) 11. The Government Statement on Regulation is available on the Treasury website at <http://www.treasury.govt.nz/economy/regulation/statement>. The guidance will be incorporated into the [CabGuide](#) in due course.

- 3.6 agencies will take full responsibility for the content of the RIS, by including a signed disclosure statement that describes the nature and extent of analysis undertaken, and highlights any key gaps, assumptions, dependencies and significant constraints, caveats, or uncertainties concerning the analysis (and any further policy work required);
 - 3.7 an agency opinion on the quality of the RIS will be included in the Cabinet paper, provided independently either by RIAT if the proposals suggest significant impacts or risks, or by someone nominated by the agency's Chief Executive for that purpose;
 - 3.8 Ministers will be required to certify in the Cabinet paper that they have carefully considered whether the paper's proposals are consistent with the expectations set out in the Government Statement on Regulation;
 - 3.9 in relation to Bills, the URL for the RIS (rather than the full text) will be included in the Explanatory Note of the Bill.
- 4 Ministers and Chief Executives should ensure that:
- 4.1 all staff involved in the preparation of submissions for Cabinet and Cabinet committees are familiar with the advice in this circular;
 - 4.2 the material in this circular is conveyed to all Crown entities or other State agencies for which a Minister is responsible, which have an involvement in the preparation of proposals that involve regulatory options.

Role and purpose of regulatory impact analysis (RIA) and Regulatory Impact Statements (RISs)

- 5 The government wants to ensure that proposals involving regulatory options are subject to careful and robust RIA to ensure that the problem cannot be adequately addressed through private arrangements, and that a regulatory solution is required in the public interest.
- 6 The government's RIA framework encourages an evidence-based approach to policy development which helps ensure that all practical options for addressing the problem have been considered and the benefits of the preferred option not only exceed the costs, but will also deliver the highest level of net benefit.
- 7 RIA should be undertaken for any policy work involving regulatory options that may result in a paper being submitted to Cabinet. "Regulatory options" means the potential introduction of new legislation, including regulations, or changes to, or the repeal of, existing legislation.² This includes:
 - 7.1 work that may result in a government Bill (or work on a Member's Bill that the government supports or adopts) or statutory regulations (as defined in the Regulations (Disallowance) Act 1989);
 - 7.2 the development of discussion documents that include options that may lead to legislative or regulatory change;

² Exemptions from the RIA regime are set out in paragraph 16.

- 7.3 “in principle” policy decisions and intermediate policy decisions, particularly those where options are narrowed down (e.g. limiting options for further work/consideration);
 - 7.4 decisions to introduce legislative changes that are merely enabling (the substantive decisions as to whether and what sort of intervention will be made later);
 - 7.5 when regulations are made by individual Ministers under an enabling power in an Act and the Minister’s decision is referred to Cabinet for noting.
- 8 The RIS is a summary of the RIA. RISs can:
- 8.1 provide a framework to inform the RIA, and help to identify and evaluate the impacts that regulatory proposals may have;
 - 8.2 provide the basis for early engagement with Ministers and therefore help to inform and influence the policy discussion and Ministers’ decisions;
 - 8.3 inform Cabinet about the range of feasible options and the benefits, costs, and risks of the preferred option(s); and
 - 8.4 enhance transparency and accountability for decision-making through public disclosure once decisions are taken.
- 9 A RIS is normally provided when papers are submitted to Cabinet committees for policy approval. 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 the Cabinet Legislation Committee.
- 10 During the parliamentary process, it often becomes necessary to amend a bill. The policy content of the amendments may be such that further approvals from Cabinet are needed for new policy or to alter existing policy approvals. If so, the original RIS should be updated to indicate how the changes affect the impact analysis (e.g. how they alter the nature and/or magnitude of the impacts).

National Interest Analysis

- 11 In accordance with the Cabinet Manual and Standing Orders 388 to 391, all multilateral treaties or “major bilateral treaties of particular significance” concluded by New Zealand require the preparation of a National Interest Analysis (NIA).
- 12 When preparing a NIA for a treaty with regulatory impacts, agencies must adhere to the [NIA drafting guidelines](#). 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.

Preliminary impact and risk assessment

- 13 RIAT is required to be involved in any proposal that is likely to have a significant impact or risk. This means that the regulatory option(s) being considered is likely to have:
 - 13.1 significant direct impacts or flow-on effects on New Zealand society, the economy, or the environment; and/or
 - 13.2 significant policy risks, implementation risks, or uncertainty.
- 14 If RIAT involvement is not required, the agency is responsible for ensuring the provision of independent quality assurance. The steps for determining RIAT's involvement are:
 - 14.1 the agency completes a preliminary impact and risk assessment (PIRA) at an early stage of policy development;
 - 14.2 the agency submits the PIRA to the relevant Treasury policy team;
 - 14.3 the Treasury policy team confirms the PIRA, and whether the RIA regime applies and whether RIAT involvement is required.
- 15 The PIRA template, which includes the criteria for assessing whether an exemption from the RIA requirements applies, is provided on the Treasury's website at <http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis>.

Exemption from RIA requirements

- 16 The RIA requirements **do not** apply where the proposal:
 - 16.1 involves 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);
 - 16.2 is suitable for inclusion in a Statutes Amendment Bill;
 - 16.3 would repeal or remove redundant legislative provisions;
 - 16.4 provides solely for the commencement of existing legislation or legislative provisions;
 - 16.5 needs to be authorised in an Appropriation Bill, an Imprest Supply Bill, or a Subordinate Legislation (Confirmation and Validation) Bill;
 - 16.6 implements deeds of settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements;
 - 16.7 is essential (the minimum necessary) in order to comply with existing international obligations that are binding on New Zealand; or
 - 16.8 has no or only minor impacts on businesses, individuals or third sector 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).

Quality assurance arrangements

- 17 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. The quality assurance criteria are on the Treasury's website at <http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis>.
- 18 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, nominated by the authoring agency's Chief Executive. A statement on the quality of the impact analysis must be provided in the Cabinet paper (see paragraph 28.2 below).

Involvement of RIA Team in the Treasury

- 19 Early engagement with RIAT is required to determine the nature of RIAT's involvement. RIAT's role will depend on the characteristics of the proposal and the policy development process, as well as the internal quality assurance arrangements of the agency. It may involve:
 - 19.1 working alongside agencies to assist them in meeting the RIA requirements;
 - 19.2 providing independent quality assurance of the RIS;
 - 19.3 referring proposals to other departments, agencies, or specialists who have relevant expertise in regulatory quality issues or the subject matter.
- 20 RIAT may, on a case-by-case basis, allow an agency to assure the quality of its own RIS even for some significant proposals where the value of RIAT involvement is lower, such as where:
 - 20.1 the lead agency has a robust policy process in the relevant policy area, and the policy work has been planned in advance (e.g. was on the agency's regulatory plan);
 - 20.2 RIAT and the agency have reached prior agreement on the policy frameworks, standards of evidence, and types of impacts to be used;
 - 20.3 other relevant departments, agencies, groups or individuals who have expertise in the subject matter have been appropriately involved and consulted;
 - 20.4 the agency has demonstrated that it has robust in-house arrangements for providing the required quality assurance arrangements.
- 21 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 (e.g. timeframes become compressed or additional policy options are included) then the agency must advise RIAT and the decisions will be reviewed.

RIS requirements

- 22 The RIS is a government agency document that sets out the agency's best advice on the problem definition, objectives, identification, and analysis of the full range of practical options. The RIS should be prepared before the Cabinet paper.
- 23 A revised RIS template is provided on the Treasury's website at <http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis>. Agencies will be able to depart from this template if there is an obviously clearer and more concise way to set out the issues that need to be covered. This RIS must, however, contain the following information:
- 23.1 an agency disclosure statement;
 - 23.2 a description of existing arrangements and the status quo (base case in the absence of further government intervention);
 - 23.3 a problem definition;
 - 23.4 objectives;
 - 23.5 options - identification of the full range of practical options;
 - 23.6 an impact analysis – analysis of the costs, benefits and risks of options, with quantification (to the extent possible);
 - 23.7 consultation;
 - 23.8 conclusions and recommendations;
 - 23.9 implementation issues, including risk analysis; and
 - 23.10 arrangements for monitoring, evaluation, and review.
- 24 The authoring government agency is required to complete a disclosure statement on the front of the RIS, which:
- 24.1 discloses information to highlight any key gaps, assumptions, dependencies, and significant constraints, caveats, or uncertainties in the analysis;
 - 24.2 indicates whether any of the policy options are likely to have effects which may not align with the commitment in the Government Statement on Regulation;
 - 24.3 is signed by the person with responsibility for the preparation of the RIS.

Publication of RISs

- 25 The full text of all RISs is required to be published on the websites of the administering agency and the Treasury. In relation to Bills, the URL (rather than the full text) is to be provided in the Explanatory Note. Hard copies of the RIS must be provided to select committees (or the House of Representatives if the Bill is passed under urgency).
- 26 When a RIS is ready for publication, agencies must send the agency website link for each RIS and an electronic (Word) copy of the RIS to Treasury at ria@treasury.govt.nz. Further detail on the publication requirements is provided in the [CabGuide](#).

RIA requirements for Cabinet papers

27 Cabinet and Cabinet committee papers that contain policy proposals to which the RIA requirements apply are required to contain a section entitled **Regulatory Impact Analysis**.

28 The section will contain three parts, as outlined below:

28.1 Regulatory Impact Analysis Requirements:

A statement explaining whether or not the RIA requirements apply and whether a RIS has been prepared and is attached to the Cabinet paper, and if not the reasons why.

28.2 Quality of the Impact Analysis:

An agency opinion on the quality of the analysis which states the following:

“**[Name of team or position of person completing opinion]** 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 set out in the quality assurance guidance.]”

28.3 Consistency with Government Statement on Regulation:

On 17 August 2009, the Government released a Statement on Regulation that commits to introducing new regulation only when it is satisfied that it is required, reasonable, and robust. This applies to any Cabinet paper proposing to introduce or amend legislation or regulation.

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

There are various options for this text, depending on the circumstances:

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

- are required in the public interest;
- will deliver the highest net benefits of the practical options available;
- are consistent with the commitments in the Government Statement on Regulation.”

OR

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

OR

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

OR

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

Regulatory proposals that do not meet the RIA requirements

- 29 The Treasury may advise the Minister of Finance and the Minister for Regulatory Reform of any regulatory proposal that does not meet the RIA requirements. This includes regulatory proposals for which a RIS was required but not prepared, for which the RIS is deficient, or which are inconsistent with the Government Statement on Regulation.
- 30 If a significant regulatory proposal meets the criteria for RIAT involvement and is agreed to by Cabinet but does not meet the government’s RIA requirements, it must be subject to a post-implementation review.
- 31 The nature and timing of this review are to be:
 - 31.1 agreed by the responsible agency in consultation with the Treasury;
 - 31.2 signed off by the responsible Minister, in consultation with the Minister of Finance and the Minister for Regulatory Reform.

Further information

- 32 If you require further advice or information on the RIA requirements, please contact RIAT or your Treasury Policy Analyst. Detailed guidance on undertaking RIA and preparing RISs is provided on the Treasury’s website at <http://www.treasury.govt.nz/economy/regulation>.

- 33 The contents of this circular will also be included in the [CabGuide](#) (available on the Cabinet Office website at <http://cabguide.cabinetoffice.govt.nz>) in due course. If you require further advice or information about Cabinet procedures, please contact the relevant Cabinet committee secretary.

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Enquiries:

Regulatory Impact Analysis Team in the Treasury
Your Treasury Policy Team

Website reference:

This circular can be found on the internet at <http://www.dpmc.govt.nz/cabinet/circulars/index.html>.

Annex I: A quick guide to Cabinet’s regulatory impact analysis requirements

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