



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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Impact Analysis Requirements

Introduction

- 1 This circular sets out the requirements for Ministers and agencies seeking approvals relating to government regulatory proposals.
- 2 This circular replaces the previous Cabinet requirements for regulatory impact analysis. It reflects Cabinet's decision in 2017 to revise its Impact Analysis Requirements to more effectively support regulatory decision-making.¹
- 3 The Impact Analysis Requirements incorporate the *Government Expectations for Good Regulatory Practice*.² Regulatory agencies are expected to adopt a whole-of-system view, and take a proactive, collaborative approach to the care of the regulatory systems(s) within which they work. The Impact Analysis Requirements focus in particular on the expectation that agencies provide robust analysis and advice to Ministers before decisions are taken on regulatory change.
- 4 This circular outlines the purpose and role of the Impact Analysis Requirements and sets out the requirements. It covers the following:
 - 4.1 government regulatory proposals
 - 4.2 early engagement to support high quality Impact Analysis
 - 4.3 exemptions from providing a Regulatory Impact Assessment
 - 4.4 content and form of Regulatory Impact Assessments
 - 4.5 Quality Assurance arrangements

¹ See CAB-17-MIN-0148.

² www.treasury.govt.nz/regulation/stewardship.

- 4.6 the “Impact Analysis Requirements” section in Cabinet papers
 - 4.7 government regulatory proposals with inadequate Impact Analysis, and
 - 4.8 publication of Regulatory Impact Assessments and Supplementary Analysis Reports.
- 5 The Impact Analysis Requirements as approved by Cabinet in April 2017 apply from the date of publication of this circular.³ An overview of the new requirements approved in April 2017 and discontinued requirements is attached as **Annex 1**. The Regulatory Impact Assessment templates, Quality Assurance criteria, Treasury forms and guidance on the Impact Analysis Requirements are all available on the Treasury website (www.treasury.govt.nz/regulation).
- 6 Ministers and Chief Executives should ensure that:
- 6.1 all staff involved in the preparation of submissions for Cabinet and Cabinet committees are familiar with the contents of this circular;
 - 6.2 the material in this circular is conveyed to all Crown entities and State sector agencies which are involved in policy initiatives relating to government regulatory proposals.

Purpose and role of the Impact Analysis Requirements

- 7 The Impact Analysis Requirements support and inform the government’s decisions on proposals for regulatory change. They are both a process and an analytical framework that encourages a systematic and evidence-informed approach to policy development.
- 8 The Impact Analysis framework involves defining the policy or operational problem that needs to be addressed, identifying the policy objectives and full range of feasible options for addressing that problem, analysing those options for their potential impacts and assessing their costs, benefits and risks, carrying out consultation, implementation planning, and arrangements for ongoing monitoring, evaluation and review.
- 9 The Impact Analysis Requirements are intended to help advisers and decision-makers avoid the potential pitfalls that arise from natural human biases and mental short-cuts, including by seeking to ensure that:
- 9.1 the underlying problem or opportunity is properly identified, and is supported by available evidence;
 - 9.2 all practical options to address the problem or opportunity have been considered;

³ To ease the transition to the new requirements, agencies may still present their Impact Analysis in the previous Regulatory Impact Statement (RIS) template up until 4 August 2017. From 7 August 2017, all Impact Analysis presented to Cabinet should use the appropriate Regulatory Impact Assessment template, unless agreed otherwise by Treasury.

- 9.3 all material impacts and risks of proposed actions have been identified and assessed in a consistent way, including possible unintended consequences; and
 - 9.4 it is clear why a particular option has been recommended over others.
- 10 The Impact Analysis Requirements also contribute to the transparency and accountability of government through the routine publication of Regulatory Impact Assessments.

Government regulatory proposals

- 11 All policy proposals taken to Cabinet for approval that include a government regulatory proposal must be accompanied by a Regulatory Impact Assessment, unless an exemption applies.⁴
- 12 A Regulatory Impact Assessment is a government agency document in which the agency provides a summary of its best advice on the Impact Analysis relating to a government regulatory proposal. This Impact Analysis should be completed and summarised before the Cabinet paper is drafted.
- 13 A “government regulatory proposal” means a proposal that will ultimately require creating, amending, or repealing primary or secondary legislation.⁵ This includes proposals which involve:
- 13.1 decisions to introduce legislative changes that are merely enabling (the substantive decisions as to whether and what sort of intervention will be made later), including creating or amending a power to make secondary legislation;
 - 13.2 decisions to create, or amend, a statutory authority to charge third parties to cover the costs of a government activity (i.e. cost recovery proposals);
 - 13.3 the development of discussion documents that include options that may lead to regulatory change;
 - 13.4 “in principle” policy decisions and intermediate policy decisions, particularly those where regulatory options are narrowed down (e.g. limiting options for further work/consideration);
 - 13.5 seeking negotiating mandates for, concluding, or seeking approval to sign treaties with regulatory impacts;⁶

⁴ Exemptions from the requirement to provide a Regulatory Impact Assessment are set out in paragraphs 22 to 25.

⁵ “Secondary legislation” means all legislation that is not primary legislation, see Legislation Bill 2017.

⁶ In accordance with the Cabinet Manual and Standing Orders 397 to 400, all multilateral treaties or “major bilateral treaties of particular significance” concluded by New Zealand require the preparation of a National Interest Analysis. The National Interest Analysis drafting guidelines can be found in the International Treating Making Guide available on the Ministry of Foreign Affairs & Trade website (<http://www.treaties.mfat.govt.nz/download/3>).

- 13.6 when secondary legislation is made by a Minister under an enabling power in an Act and the Minister's decision is referred to Cabinet for noting.
- 14 A Regulatory Impact Assessment must be provided when papers are submitted to Cabinet committees for policy approval. In rare circumstances, the policy proposal and draft legislation may be submitted together. In these cases, the usual procedure is for the paper to be submitted to the relevant Cabinet policy committee rather than directly to the Cabinet Legislation Committee.
- 15 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 Regulatory Impact Assessment should be updated to indicate how the changes affect the agency's Impact Analysis (e.g. how they alter the nature and/or magnitude of the impacts).

Early engagement to support high quality Impact Analysis

- 16 Inadequate Impact Analysis often arises from incomplete problem definition, and unclear objectives and a failure to consider all feasible options. As these are key foundations of policy analysis, inadequacies in these areas cannot be easily fixed at a later stage, with consequent impacts on the quality of the Impact Analysis.
- 17 Treasury's Regulatory Quality Team and the relevant Treasury policy team will, therefore, provide feedback on these areas at the request of the agency policy team. This feedback is most effectively provided in the early stages of policy development. It will focus on the types of things a Quality Assurance panel would look for in the final assessment of the problem definition, objectives and options identification. Early indications of what is expected should assist agencies to plan and develop their analysis. The feedback will be provided within a reasonable timeframe on a best-endeavours basis.
- 18 It is strongly recommended that agencies seek this feedback, including from their Quality Assurance panel or specialist. This assistance may be especially valuable when the agency considers that the problem is important in terms of its human, social, economic or environmental impacts, and that the policy process is likely to explore material options to create, amend or repeal primary or secondary legislation.

- 19 This information can be provided as soon as agencies have some initial ideas to test, and before they proceed further with the analysis. There is an engagement form available for this purpose on the Treasury website, or agencies may have their own document which sets out information on the proposed problem definition, objectives and options.
- 20 If it is already apparent at this point that the Impact Analysis Requirements are applicable (and how they will apply) to the policy exercise, Treasury will also confirm this as part of the early feedback. Otherwise this can be confirmed at a later stage.

Exemptions from providing a Regulatory Impact Assessment

- 21 While use of the Impact Analysis framework is encouraged and always recommended in the development of advice on any form of government policy initiative, a Regulatory Impact Assessment is not required for certain types of government regulatory proposals.

Technical or case-specific exemptions

- 22 A Regulatory Impact Assessment is not required where Treasury is satisfied that a government regulatory proposal:
- 22.1 is suitable for inclusion in a revision Bill (as provided for in the Legislation Act 2012);
 - 22.2 is suitable for inclusion in a Statutes Amendment Bill (as provided for in Standing Orders);
 - 22.3 would repeal or remove redundant legislative provisions;
 - 22.4 provides solely for the commencement of existing legislation or legislative provisions;
 - 22.5 is solely a request to authorise spending in an Appropriation Bill or an Imprest Supply Bill;
 - 22.6 is solely a request for confirmation of secondary legislation that has already been made;
 - 22.7 implements deeds of settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements;
 - 22.8 brings into effect recognition agreements under the Marine and Coastal Area (Takutai Moana) Act 2011; or
 - 22.9 is essential (the minimum necessary) in order to comply with existing international obligations that are binding on New Zealand.

Minor impacts exemption

- 23 A Regulatory Impact Assessment is not required where Treasury is satisfied that a government regulatory proposal has no or only minor impacts on businesses, individuals or not-for-profit entities. This might, for instance, be the case for certain changes to the internal administrative or governance arrangements of the New Zealand government, such as the transfer of responsibilities, staff, or assets between government agencies.

Discretionary exemptions

- 24 A Regulatory Impact Assessment may not be required where Treasury is satisfied that a government regulatory proposal fits within the following situations:
- 24.1 the relevant issues have already been adequately addressed by existing Impact Analysis; or
 - 24.2 a Regulatory Impact Assessment would be substantively duplicated by other government policy development, reporting and publication requirements or commitments (e.g. the preparation of a discussion document, National Interest Analysis or Better Business Case); or
 - 24.3 the government has limited statutory decision making discretion or responsibility for the content of proposed delegated legislation; and
 - 24.4 formal Impact Analysis is not the best and most cost-effective way to ensure that Ministers have access to relevant information to inform their decisions.
- 25 An exemption granted under paragraph 24 may be subject to conditions, such as the inclusion, provision and/or publication of specific information (e.g. incorporating elements of the Impact Analysis framework in a discussion document, National Interest Analysis or Better Business Case). Depending on the nature of the conditions, they may be fulfilled before or after the relevant Cabinet paper is submitted.

Seeking an exemption

- 26 Whether an exemption applies is determined by Treasury based on the information an agency provides for each proposal, or aspects of a proposal, on the specific exemption sought and the agency's reasons as to why the exemption applies. There is an application form available for this purpose on the Treasury website.
- 27 The process for exemptions sought under paragraph 24 is likely to include discussion between Treasury and the agency. These discussions will include matters such as:
- 27.1 how the Impact Analysis Requirements have already been met;

- 27.2 why further Impact Analysis is not the best and most cost-effective way to provide Ministers with information relevant to their decision-making;
 - 27.3 the extent to which government's decision making discretion or responsibility has been constrained;
 - 27.4 the potential conditions of any exemption.
- 28 Where an exemption applies, Treasury will provide the agency with a statement for inclusion in the relevant Cabinet paper (see paragraph 40 below).

Content and form of Regulatory Impact Assessments

- 29 The Regulatory Impact Analysis templates tailor the form and content of the Regulatory Impact Assessment to the nature and significance of the regulatory proposal. These templates are available on the Treasury website.
- 30 Impact Analysis must be presented using the Regulatory Impact Assessment template (unless agreed otherwise) determined by Treasury following consideration of information provided by the agency about its processes and on the particular proposal. Agencies must use the confirmation form available for this purpose on the Treasury website.
- 31 Treasury may on a case by case basis agree with the agency to depart from the Regulatory Impact Assessment templates.
- 32 The Regulatory Impact Assessment must be signed off by a responsible manager, and must disclose information to highlight any key gaps, assumptions, dependencies and significant constraints, caveats or uncertainties regarding the Impact Analysis.

Quality Assurance arrangements

- 33 All Regulatory Impact Assessments must be independently quality assured against the Quality Assurance criteria set out on the Treasury website. The Quality Assurance criteria are the same regardless of who carries out the Quality Assurance.
- 34 Quality Assurance arrangements are determined by Treasury following consideration of information provided by the agency about its processes and on the particular proposal. Agencies must use the confirmation form available for this purpose on the Treasury website.
- 35 Whether the agency or Treasury's Regulatory Quality Team is responsible for arranging Quality Assurance is determined by Treasury based on the following criteria:
 - 35.1 the agency's policy capability and the demonstrated robustness of its in-house quality assurance processes;
 - 35.2 the strength of the agency's regulatory stewardship practice in the affected regulatory system;

- 35.3 the robustness of the planned policy process;
 - 35.4 the level of significance of the likely impacts; and
 - 35.5 the levels of risk or uncertainty around the likely impacts.
- 36 Where the agency is responsible for arranging Quality Assurance, the agency must ensure it is done by a person or group not directly involved in preparing the Regulatory Impact Assessment, and nominated by the responsible agency's Chief Executive.
- 37 The decision that the agency is responsible for arranging Quality Assurance is not necessarily final. The conditions on which the decision is made are set out and agreed with the agency. If any of the conditions change (e.g. timeframes become compressed or the policy initiative is rescope) then the agency must advise Treasury's Regulatory Quality Team and the decision will be reviewed.
- 38 A statement by the Quality Assurance assessors on the overall quality of the Regulatory Impact Assessment must be provided in the Cabinet paper (see paragraph 41.2 below). The quality assured Regulatory Impact Assessment should be lodged with the Minister's Cabinet paper.

The "Impact Analysis Requirements" section in Cabinet papers

- 39 Cabinet and Cabinet committee papers that contain government regulatory proposals must contain a section entitled "Impact Analysis Requirements".
- 40 If an exemption applies, this section must contain a statement from Treasury confirming that the proposal, or aspects of it, is exempt from the requirement to provide a Regulatory Impact Assessment and, if relevant, any conditions of the exemption.
- 41 If an exemption does not apply, this section must contain two parts, as follows:
- 41.1 a statement by the responsible agency that the Impact Analysis Requirements apply and, therefore, a Regulatory Impact Assessment is required and is attached to the Cabinet paper; and
 - 41.2 a statement by the Quality Assurance assessors providing an independent assessment of the overall quality of the Regulatory Impact Assessment.

Government regulatory proposals with inadequate Impact Analysis

- 42 A government regulatory proposal has inadequate Impact Analysis if:
- 42.1 there is no accompanying Regulatory Impact Assessment and Treasury has not exempted the proposal from the Impact Analysis Requirements; or
 - 42.2 the accompanying Regulatory Impact Assessment has not been independently quality assured or has been assessed as “does not meet” the Quality Assurance criteria.
- 43 The Chairs of Cabinet committees have discretion on whether papers containing government regulatory proposals with inadequate Impact Analysis are considered.
- 44 The Treasury may advise the Minister of Finance and the Minister for Regulatory Reform of any government regulatory proposal with inadequate Impact Analysis.
- 45 If a government regulatory proposal with inadequate Impact Analysis proceeds to discussion at a Cabinet committee, and substantive decisions are made:
- 45.1 the responsible Minister must provide a Supplementary Analysis Report, and
 - 45.2 the nature and timing of this report must be agreed by the responsible Minister and the Minister for Regulatory Reform.
- 46 The Supplementary Analysis Report must be Quality Assured and published along with the original Regulatory Impact Assessment (if any).

Publication of Regulatory Impact Assessments and Supplementary Analysis Reports

- 47 The full text of all Regulatory Impact Assessments and Supplementary Analysis Reports must 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.
- 48 Hard copies of Regulatory Impact Assessments, and Supplementary Analysis Reports if any, must be provided to select committees (or the House of Representatives if the Bill is passed under urgency).
- 49 When a Regulatory Impact Assessment or Supplementary Analysis Report is ready to be published, the agency must send for each Regulatory Impact Assessment and Supplementary Analysis Report, the agency website link and an electronic (Word) copy to Treasury’s Regulatory Quality Team at ria@treasury.govt.nz.

Further information

- 50 If you require further advice or information on the Impact Analysis Requirements, please contact the Regulatory Quality Team or your Treasury Policy Team.
- 51 Detailed guidance on meeting the government's Impact Analysis Requirements and preparing a Regulatory Impact Assessment is available on the Treasury's website at:

<http://www.treasury.govt.nz/regulation>.
- 52 The changes set out in this circular will be reflected 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.

Michael Webster
Secretary of the Cabinet

Enquiries:

Regulatory Quality 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 1: Overview of the new Impact Analysis Requirements approved in April 2017 and discontinued requirements

- 1 The main changes to the Impact Analysis Requirements as approved by Cabinet in April 2017 are:⁷
 - 1.1 additional new grounds for a discretionary exemption from the Impact Analysis Requirements;
 - 1.2 new criteria to determine who arranges Quality Assurance, including making greater use of agency Quality Assurance of significant government regulatory proposals;
 - 1.3 new Regulatory Impact Assessment templates for agencies to present their Impact Analysis to Cabinet;
 - 1.4 introducing Cabinet Committee chair discretion on whether government regulatory proposals with inadequate Impact Analysis are considered;
 - 1.5 requiring a Supplementary Analysis Report for government regulatory proposals with inadequate Impact Analysis that have been the subject of substantive Cabinet decisions.
- 2 The above changes are underpinned by the following objectives:
 - 2.1 increase the use of robust analytical frameworks, in particular to encourage analysis grounded in microeconomics and the government expectations for good regulatory practice;
 - 2.2 ensure the Impact Analysis Requirements better reflect and support the stages of policy development, in particular by encouraging early and ongoing Impact Analysis and advice;
 - 2.3 focus the efforts of agencies on those proposals where Impact Analysis is of most value.
- 3 From 30 June 2017, there is no longer a requirement for a post-implementation review for significant government regulatory proposals that proceed with inadequate Impact Analysis [CAB Min (09) 27/11]. This has been replaced by the requirement for a Supplementary Analysis Report.⁸
- 4 From February 2013, there is no longer a requirement for Ministers to certify in the Cabinet paper that they have considered whether the proposals are consistent with the expectations set out in the *Government Statement on Regulation of August 2009*.⁹

⁷ See CAB-17-MIN-0148.

⁸ Ibid, rec 20.

⁹ See SEC Min (13) 2/2.