

# **Regulatory impact statements – evaluation**

**Report to the Treasury for:**

**the Regulatory Impact Analysis Reference  
Group**

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## Key Points

- Overall we see some signs of improvement in the suite of 12 RIAs and 18 RISs that we reviewed. Agencies demonstrated a sound understanding of the RIA process and placed a strong emphasis on consultation. Exemptions were generally appropriate.
- However, we retain two fundamental concerns.
  - (i) First, a number of RIAs and RISs appear to have been tacked onto the end of the regulatory change policy process as a “necessary but separate evil”. By this stage in the process, it is often too late to fix any analytical or consultation gaps, which can make the earlier analysis seem lightweight or unbalanced.
  - (ii) Second, there was a lack of consistently clear thinking on the *scale* of the policy problem in question and whether it met the economic growth test thresholds. The counterfactual to the suggested policy change (the status quo) was often poorly specified. The lack of detailed cost benefit analysis (CBA) was noticeable by its absence.
- The best RIAs and RISs were produced by policy shops that saw RIA as an integral part of their culture of policy development processes. These shops had RIA ‘champions’ and ready access to all the necessary RIA guidelines. When CBA capabilities were not available in-house, external experts were pulled in to add rigour. Their consultation processes were efficient and they weighted stakeholders’ responses appropriately before making any revisions.
- We would see value in some of the better performing policy shops with integrated RIA cultures sharing their approaches with other agencies so that the potential benefits of such an approach can be more widely appreciated.

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# 1. Introduction

This is the second evaluation of Regulatory Impact Analysis (RIA) and Regulatory Impact Statements (RISs). The evaluation covers proposals submitted to Cabinet between 1 October 2007 and 29 August 2008.

A RIA must be undertaken for regulatory proposals, and a RIS attached to the Cabinet paper asking for policy decisions. Usually, government agencies self-certify that the proposals are consistent with the Code of Good Regulatory Practice and whether the RIA and RIS are adequate. Where proposals are likely to have a significant impact on economic growth the Regulatory Impact Analysis Team at the Treasury certifies the adequacy of the RIA and RIS.

This evaluation considers:

- the RIA of 12 self-certified proposals
- the RISs of 18 self-certified proposals.

The objective is to evaluate how departments are meeting their responsibility under the RIA regime to self-assess the adequacy of proposals that are not considered likely to have “a significant impact on economic growth.”

Our Terms of Reference state that the purpose is to:

- help departments to improve their own RIA systems and processes, and their policy capability more generally
- inform Ministers and Chief Executives about the performance of departments in meeting the RIA requirements
- feed into the development of advice and options to strengthen the RIA regime, thereby leading to better regulatory decision making.

In broad terms an RIA is adequate if it convincingly establishes that the proposed regulatory change is needed because the current framework cannot deal with the problem, that appropriate analysis was undertaken given the issue’s magnitude, and that adequate consultation was undertaken.

In similarly broad terms, a Regulatory Impact Statement (RIS) should provide a summary of the required information, focus on the analysis of options, be able to stand alone, keep background to a minimum, specify assumptions made about drivers of the problem and how the solution will influence the drivers, and examine a full range of economic, social, cultural, health and environmental outcomes.

Overall, the effort has to improve the information for the decision-making process, and fulfil a disclosure role.

## 2. Approach to the evaluation

In accordance with the Terms of Reference, this evaluation focuses on “the process followed by the relevant agency to implement the RIA guidelines and the extent to which that process resulted in the final RIA (including RIS) meeting the RIA guidelines.” The guidelines are at [www.treasury.govt.nz/publications/guidance/regulatory](http://www.treasury.govt.nz/publications/guidance/regulatory).

The evaluation methodology follows a similar approach to that undertaken in 2007:

- in-depth evaluations of 12 RIAs selected by the Regulatory Impact Analysis Team:
  - quality of the RIA and the quality assurance process
  - adherence to the Code of Good Regulatory Practice
  - adequacy of the RIS
  - the application of the test for significant impact on economic growth
  - adherence to publication requirements
  - process followed
  - meeting discussion document requirements
  - the use of exemptions
- a desk-based evaluation of how effective RISs were as a communication and disclosure tool, based on a sample of 18 RISs selected by the RIAT.

For the 12 in-depth assessments we read the RISs and any supporting materials and interviewed contacts at the authoring agencies. A short 2-3 page assessment was then prepared for each of these, using the framework provided by the RIAT. The authoring agency was invited to comment on a draft, and given an opportunity to include a dissenting comment. These assessments were made available to RIAT.

A one page assessment was prepared for each of the 18 RISs against a common framework (see Table 1). Our focus was on the effectiveness of each RIS as a communication and disclosure device to decision-makers and other stakeholders.

Our analysis was undertaken, and our findings are presented, in a way that allows the RIAT and departments to track overall progress over time, and assists departments with practical insights to help them improve their performance.

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**Table 1 Framework for one page assessments**

Complete – is all the required information included in the RIS?

Correct – is the information free of errors?

Convincing – are the analysis and conclusions supported by a clear logic, an appropriate assessment of costs and benefits, and supporting evidence?

Contingencies – does the statement show consideration of key risks and how they are mitigated?

Consultation – does the statement show evidence of stakeholder consultation and how any issues raised have been dealt with?

Clear and concise – is the material communicated in a plain language, and is the statement of an appropriate length?

Overall – is the statement overall effective at communicating the required information to the decision-makers and stakeholders?

Source: NZIER

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## 3. Findings from in-depth evaluations

### 3.1 Where have we come from?

The review we undertook last time showed that of 8 RIAs:

- 3 were adequate
- 5 were not.

Weaknesses were: problem definition, scale, cost benefit analysis and risk analysis.

Strengths were consultation, brevity and clarity.

### 3.2 Broad results this time

Our assessment of the 12 in-depth evaluations we undertook is that:

- 5 are not up to it
- 2 are adequate
- 2 are good
- 2 others were exempt
- 1 lacked a RIS but followed the RIA process.

Overall this appears to be a similar result to the previous review and suggests there is a way to go before the RIA process is firmly bedded into the policy advice process and producing the desired results.

## 3.3 Strengths and weaknesses

### 3.3.1 Lack of integration – RIA must become the way the job is done

For many of the examples we reviewed, the results and the processes revealed that the underlying idea of the RIA (trying to influence the way regulation was approached) had not been achieved. The RIA ideas were virtually seen as detached from contributing to the pressing need to complete another procedure – getting the business done. That is, the focus was often on getting the Cabinet paper and discussion documents through the necessary decision process and signed off, before turning attention to the RIA as a final ‘necessary evil’.

The discussion documents were not built around the RIS structure; they had their own format. This is not fatal, but risky. And when the chips were down the RIS suffered.

Our findings align with what we see in our regular quality reviewing work for 15 or so policy shops. It is as though, from a management viewpoint, output volume and quality are separable. So if resources are scarce the quality is let slide to achieve higher speed throughput.

### 3.3.2 Uncomfortable with the hard questions

Our strong impression was that even some of the agencies that managed to adequately sketch the costs and benefits associated with their proposal were not completely *au fait* with the CBA framework that underpins the RIA. This was evident from the way the material was presented and the lack of solid attempts to carry the work through to a conclusion.

We believe too that this lack of comfort showed in the way the economic impact test was largely placed to one side.

### 3.3.3 Competencies are clear

Agencies are comfortable and capable when it comes to consultation. The ability to generate, circulate and deliberate on a discussion document or to gather and sift the views of stakeholders is virtually universal. The process could be improved by using the frameworks from the RIA and the RIS more in the drafting of the documents used, but the capability seems to be established.

Similarly the implications of the exemptions rule are appreciated and can be included smoothly in the process.

## 3.4 Process followed

### Regulatory Impact Analysis

There was broad support for the RIA process. Agencies all knew about the requirement and what they should be doing.

## Code of Good Regulatory Practice

The Code is readily available, but staff awareness of it is mixed. Even when staff profess awareness, for whatever reason it effectively just gathers dust on the shelf as it's not seen as an integral part of the process. So the Code is essentially ineffectual. It is not having an effect on the way policy analysts go about their job.

## Regulatory Impact Statement

We still found RISs to be an “optional extra” for many policy development processes. It was not seen as something that was fundamental to either producing policy or even producing good policy.

There seemed to be two distinct ways RISs are produced – each has their potential problems.

- As an **integral** part of the development process. This means the RIS is developed early (when the proposal and the counterfactuals are identified and the benefits and costs outlined.) The risk of this approach is that the early ‘rough’ ideas are carried over into the final version without the updating and refinement that the process will usually entail.
- As an **after-thought**. In other words, done as a whole once the rest of the task (the production of the Cabinet Paper) is complete. The drawback of this approach is that the Cabinet paper and associated discussion documents are prepared without the benefit of a firm RIA framework.

## Application of the test for significant impact on economic growth

This was not well done, in general. In some cases, it is a non-trivial task and the agency probably needs to invest in some research to develop the necessary parameters to be able to apply the test. Sometimes it required a much broader way of thinking about how the business of an agency might actually interact with how business is done, or the cost of it.

So in the case of Justice, MED, or in the food safety area, interventions often reduce uncertainty about some aspects of business for the commercial community, but these are not always translated as have a link to growth. A broader analysis would be required to quantify the impact on growth, but a discussion of this effect should be possible at least. For some agencies, some research on the wider evidence (e.g. in overseas publications) for this would be an investment as it would come into play for other RIA work.

## Publication requirements

These were not well known and the application of them was very erratic. As they come at the end of the process, an agency under pressure is likely to struggle with them as the analysts move on to the next task. We also got the impression of people not being familiar with their agency's process for publishing RISs, which is an internal management issue.

## Departmental processes followed in meeting the RIA requirements

Different agencies had developed their own individual methods of implementing the RIA process. Given the variety of styles different shops have this is to be expected and has some logic behind it. Diversity of approach is one of the strengths of the New Zealand system.

But there are elements that different shops have worked out for themselves that could be shared among agencies and possibly implemented more widely. For instance, the resources that MAF and MAF Biosecurity have collected and make available to staff would be of interest to others.

## Requirements for discussion documents

Of the ones seen, discussion documents were generally prepared with the purpose of regulatory change in mind, and this was made clear. But they were of varying quality, and did not always take the opportunity to quiz stakeholders on topics that might inform the preparation of the RIS. We did not see discussion papers that were essentially in the form of a draft RIS.

## Application of exemptions

There were several examples among the sample examined that claimed an exemption. Broadly they were handled reasonably and the rationale was included.

The common sense approach to exemptions seems to be working well. Other issues with the RIA process are more worrying.

## 3.5 Barriers, facilitators and lessons

Issues and key findings are as follows:

- **Resource pressure** (time and people) seems to be the enemy of good process – but there is no dominating reason why it should be. What can be done?
- **Political pressure** needs to be managed – a number of RISs showed signs of a struggle to do the job cleanly when the decision was very politicised, to the point of being predetermined. This reflects the forces of reality, but it also undermines the integrity of agencies and the role of the RIS in providing independent assurance. How does this core structural issue get resolved?
- **Consultation** is a competency that most shops have largely mastered. But it also faltered under time pressure. Perhaps arrangements could be better ‘pre-organised’ to provide different levels of consultation depending on the time available. As long as there is a chance of the shop coming under time pressure, there would be a return to investment in process and learning.
- **Integration.** Good work is done when the quality policy process and the RIA are integrated – this seems to characterise good shops. Some even have named champions and/or built up resources such as desk-files (including intranet material to make all the supporting ideas available.)

- **Code of good regulatory practice** is implicit for many shops. We found few explicit references and little awareness of the Code.
- **Publication** is largely hit and miss. Its place, even in shops strongly supporting the RIA process, is problematic.
- **Counterfactuals** – these are key to the analytical structure (CBA) being used. But key features of the status quo or of options are not always made clear. This lack makes it hard to get sense of costs and benefits. This is especially important where the analysis is qualitative.
- **The scale** of the issue is often missing or poorly defined – it becomes a struggle to see what is at stake. And this is a key feature of the approach to the basic question: is the game worth the candle?
- **Options.** Another frequent lack is a sensible range of options. In too many cases the attitude becomes TINA (there is no alternative). It is not always clear whether this was due to political pressure or poor analysis/ policy processes.
- **Economic growth test** – this is not something risk management or social policy agencies seem to be able to deal with well. There needs to be more background and practical support for these agencies to ensure they can administer it with confidence.

## 4. Review of Regulatory Impact Statements

### 4.1 Where have we come from?

In the previous assessment round of 12 RIS's we found:

- 5 were satisfactory, of which none were particularly good; while
- 7 failed (as devices to communicate the key points).

Weaknesses found were similar to those in the RIA assessments, discussed above.

### 4.2 This time

We assessed 18 RISs, being three from each of six agencies.

Strictly, the review of RISs is not intended to make a sharp judgement on whether the RISs are adequate as set out in the RIA Guidelines.

To give a sense of the spread of quality we gave each RIS a mark out of 10, with 5 being poor, 7 satisfactory, and 8 good. This mark is an experience-based judgement on how well the RIS overall “does its job” as a stand-alone piece, communicating the key factors to a “new” reader. These judgements are made without taking into account any pressures and constraints faced at the time. This is because we do not have information about pressures and constraints, and also because to a customer (the reader) such explanations are generally not valid justifications; management is there to resolve such constraints. Indeed, the idea of a rating is to allow a ‘blurring’ of the boundary to reflect the complexities of such a judgement.

But, standing back and coolly looking at the correlation between the quality of the RIS and the RIAs we looked at in-depth, those RISs with a mark of 7 or higher are likely to correspond with an assessment of adequacy.

### 4.3 Overall findings

Based on the approach taken above, the assessment gave the following picture of the RISs we reviewed:

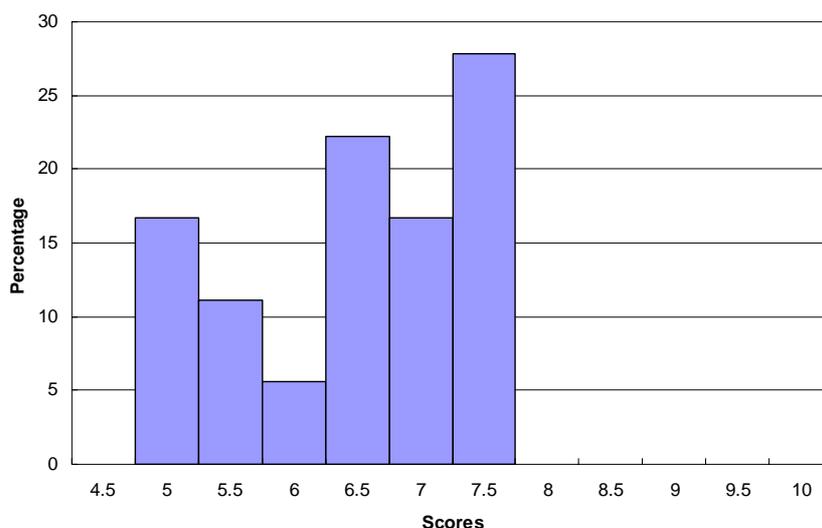
- 8 were adequate or just a bit better
- 10 were not, of which 6 were poor.

Looking at the spread of assessment scores we see the following picture. The complete absence of good or great papers is as worrisome as the presence of poor papers.

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### Figure 1 Summary of assessment results

Percent of Regulatory Impact Statements



Source: NZIER

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## 4.4 Areas done well

The RISs we assessed displayed the following significant strengths:

- **Consultation.** The agencies reviewed showed they could prepare and manage quite often reasonably extensive consultations. They were comfortable with preparing and releasing documents to the public at large, or with identifying and contacting key stakeholders. Careful appraisal of the results was more demanding and in several cases this was not so well accomplished. Some placed too much weight on those who bothered to reply without looking at who they were and what their interests would be.
- **Exemptions.** Agencies were broadly aware of the rules and guidance around the need for an RIS. They were generally able to set out clearly why there was an exemption.

## 4.5 Areas for improvement

The RISs we assessed displayed the following significant weaknesses:

- **Scale.** An assessment of the size, and thus impact, of the regulation being contemplated was often missing. This leaves the reader scrambling to put the measure into perspective. It also guts the RIS of its core balancing point: is the game worth the candle?
- **Alternative options.** The ideal set of options is mutually exclusive while being collectively exhaustive. Sometimes this is not possible. But whatever the situation there needs to be a serious and logical set of alternatives to illustrate the key point that the proposal is the best way to accomplish the end in mind. We are not able to

assess whether it is bounded imagination or the frequent lack of a framework that is the cause. But the lack is a real one.

- **Lack of integration.** The RIA process was often not reflected in the RIS. As discussed above, RIA is a “way of doing things” that provides analysts with a generic framework within which a respectable result can be produced. It naturally fits “around” the task of producing a RIS. When they are not fitted closely together the process is more problematic and we find one or other or both sides suffers. In particular here we saw some poor RIS work.
- **Cost/ Benefit Analysis.** CBA is not a difficult technique; indeed, its underlying logic is rather simple. But it has several demanding technical aspects, and these are often featured in the type of regulatory areas reviewed here. So, for instance, the clear definition of the *status quo* and thus the nature and size of the distinction between the options can be a challenge. As can working through the full identification of all of the costs and benefits, and searching out methods to put some scale (or, better, a figure or two) on the elements of the CBA.

## 5. Conclusions and future steps

### 5.1 Overview

This second review of the RIA and the associated production of RISs shows that the RIA results are better while the RIS quality seems to be about the same. But we note the incidence of a large number of RISs that were around the adequate mark and suggest that there is overall evidence of a gentle improvement.

We suggested last time that the agencies with whom we talked were broadly committed to the ideas. Our impressions this time are similar. There are interesting developments talking place and this bodes well for the growing achievement of sound RIA process and better RIS production.

### 5.2 Integration – going round the long way?

What has emerged more starkly is the way that the practicalities of agency operational style and setting affect the results. We saw signs of this last time but somehow this round it was more pervasive.

Our diagnostics must be seen as tentative and thus requiring further confirmation, but are based on this investigation and our other quality benchmarking work.

We see the aim of the RIA as being to effect a change in output quality by altering the way analysts go about their tasks. But as we have seen in many shops when looking at advice quality, this attitude and process change is a non-trivial shift.

The proof we cite is the way process is disrupted when pressure is applied. The RIA and/or the RIS are revealed as “clip-ons” to the way tasks are accomplished. Their requirements are seen as surplus and thus left to one side. In our strong experience, the RIA is only truly effective when it becomes the “way things are done around here,” or, in other words part of the basic shop culture.

This suggests that the way ahead for those trying to graft this culture into the wider public sector have a long and possibly uphill road ahead.

### 5.3 Collective action - prospects

In addition to this impression we saw several other areas where there may be room for group action to improve the implementation of RIA.

#### 5.3.1 CBA – root and branch

CBA is not rocket science in design. But it is potentially tricky in execution. Some courses and coaching in the various key facets of the practical side of the fundamentals might improve the ability and thus confidence of the analysts in agencies seeking to apply the technique.

We would suggest the following topics for attention:

- counterfactuals and options
- valuations – particularly in non-market areas
- identifying benefits
- identifying costs
- quantifying social costs

### 5.3.2 Dealing with political pressure

We consider that the worst way to deal with political pressure is to ignore it in the documentation; yet this was the approach that seem to have been adopted. In part this reflects unfinished business from the change in style of Cabinet Papers that took place in 1984 to make them all Ministers' papers. The myth that individual Ministers actually prepare the papers sits badly with the mechanics of agency consultation and incorporation of views, which is still redolent of the officials' papers of yore.

We wonder whether there is not room for some central agency or other collective action to try and secure a degree of system-wide cover for certain protocols to allow agencies to be open and honest about the way the paper has been produced to a brief. Our view is that the time is ripe for such a move.

### 5.3.3 Consultation diversity

Several cases of consultation we saw undermined the wider public sector reputation for competency in this art. This may suggest room for some collective action to improve standards.

The instances were:

- Poor attention to the quality of the responses. Few consultation exercises are anything like a census. By their nature they cannot provide a comprehensive picture of the views of all those likely to be affected. In practice this is a sampling exercise. And has the same requirement for checking the bias and worth of the results. The competencies to remedy problems can be widespread; from design and execution, to the need for common sense and care in interpretation through to anticipation of potential objections and criticisms. These can be developed and honed.
- Failure to have a varied set of consultation capacities available. Several proposals were discussed only in terms of the reactions of agencies. This meant there was a very unbalanced picture put to Ministers and the readers of the RIS. A small amount of "pre-cooking" of potential stakeholders can generally produce a latent set of consultees available to respond on the issues of the day with care and attention, quickly and without making a public fuss. Such an investment might be promoted centrally.