

# The Treasury

## Temporary Suspension of Regulatory Impact Analysis Requirements for Direct Covid-19 Responses Information Release

May 2020

This document has been proactively released by the Treasury on the Treasury website at

<https://treasury.govt.nz/publications/information-release/covid-19-temporary-suspension-regulatory-impact-assessment-requirements>

Context: This guidance was published on the Public Service Intranet (PSI) website on 31 March 2020. Prior to the publication of this guidance, public service chief executives and relevant staff were advised by emails from the Treasury of the temporary suspension of RIA for direct Covid-19 regulatory proposals.

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Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

[39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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## Temporary suspension of RIA requirements for direct Covid-19 responses

This advice complements the email sent from the Treasury's Regulatory Quality Team (RQT) to departmental RIA contacts on Friday 27 March 2020.

### Introduction

Cabinet has decided (CAB-20-MIN-0138) to suspend the Regulatory Impact Analysis (RIA) requirements for regulatory proposals responding directly to Covid-19 that are submitted to Cabinet up until or on 31 August 2020. This decision is designed to assist timely government responses to the evolving context of Covid-19.

This paper sets out the process for proposals that may fall within this suspension, and provides more information on the Cabinet decision.

**Please note, there is no change to the RIA requirements or processes for other government regulatory proposals.**

### Departmental RIA contacts are asked to:

- Please ensure that this information is passed on to relevant policy managers and teams, and any others who need to know in your department.
- Advise the Regulatory Quality Team (RQT) of any pending Covid-19 regulatory proposals in your department, and also keep some oversight of any such proposals to assist RQT to manage the processes.

### The process for Covid-19 related regulatory proposals

The following process applies to any regulatory proposal that you believe directly responds to Covid-19.

1. **Contact your Treasury Vote team and the RIA mailbox ([RIA.Team@treasury.govt.nz](mailto:RIA.Team@treasury.govt.nz)) as soon as possible** when you start work on a regulatory proposal which you believe directly responds to Covid-19.
  - This is essentially the same as the normal process, but it is more important than ever that you **make contact as early as possible**.
  - Please add **Covid-19 response proposal** to the email subject-line.
2. **The Treasury decides whether your proposal is a "direct Covid-19 response" or not. If yes, RIA is suspended for the proposal.**
  - RQT will work with the Treasury Covid-19 Team and the Vote team to make this decision.
  - We may ask for further information to help us decide whether the proposal is necessary to respond to the current challenges, and therefore qualifies for the exemption.
  - **We will give you an answer as quickly as we can on whether the Covid-19 RIA suspension applies to all or some of your proposal.**
  - If we are clear that the suspension applies to some areas of your proposal but need to think more about other aspects, we will confirm the former and come back to you as soon as we can on the latter.

**3. RIA is still valuable if it can be done, so even if the RIA suspension applies, you may choose to do regulatory impact analysis to help inform Ministers' decisions**

- If the proposal is particularly significant and you have the opportunity, doing at least some impact analysis would help inform Ministers' decision-making, and provide a platform for free and frank advice.
- RQT is happy to work with you on where to focus your impact analysis. The areas listed in point 5 below would be a starting point, as would the questions on the Coversheet of the Full-impact-statement template (<https://treasury.govt.nz/information-and-services/regulation/impact-analysis-requirements-regulatory-proposals>).
- RQT do not yet have a settled approach to whether quality assurance (QA) is required for any such optional impact analysis, or if so, who would lead the QA. For now at least we will work with you case-by-case.

**4. If RIA is suspended, the Treasury may discuss with you what further analysis could better support Ministers' decision-making, in accordance with paragraph 4.2 of Cabinet's decision, and provide you with a statement for your Cabinet paper.**

- Once we've confirmed a Covid-19 suspension, we may come back with questions and suggestions for further analysis and discuss what can feasibly be included in the Cabinet paper, taking account of issues such as significance, novelty, timing etc.
- RQT will provide text confirming the suspension for the "Regulatory Impact Statement" section of the Cabinet paper.
- The text we provide may include comment on the outcome of our discussions on further analysis, but it will not be the normal quality assurance comment (meets, partially meets, does not meet).

**5. Areas where the Treasury is likely to focus its questions on further analysis**

Once a suspension is confirmed, and depending on the analysis you have already provided and the nature of the proposal, our questions for you are may include the following:

- How clear is the problem definition?
- How clear are you that the proposal is the best way to address it? How feasible is it?
- What unintended consequences may arise from the proposal?
- How will compliance be promoted or ensured?
- What might be needed to ensure an orderly transition back to normal requirements?

## **Making contact with RQT**

As noted above, please use the RIA mailbox ([RIA.Team@treasury.govt.nz](mailto:RIA.Team@treasury.govt.nz)), with **Covid-19 response proposal** in the email subject-line, and cc your email to Patrick West-Oram

[39]

Patrick is the main RQT contact for

questions relating to the Covid-19 temporary suspension of RIA.

## Monitoring operation of the suspension and regulatory quality issues

RQT will monitor operation of the suspension, including whether adjustments are necessary. We will also keep track of how more general issues of regulatory quality are being managed.

### Cabinet decision

On 23 March 2020 Cabinet:

- 1 **noted** that the Regulatory Impact Analysis (RIA) requirements do not provide for proposals developed at pace to respond to emergencies such as the Covid-19 pandemic;
- 2 **noted** that the current approach of considering whether these proposals may proceed without RIA, and invoking no consequences when they do, consumes scarce departmental and Treasury resources and time without adding value, and risks bringing the RIA process into disrepute;
- 3 **agreed** to suspend the RIA requirements for emergency regulatory proposals relating directly to Covid-19, so that these proposals may proceed to Cabinet decisions without accompanying RIA at any time up until or on 31 August 2020;
- 4 **agreed** to mitigate the risks of the decision in paragraph three above by providing that:
  - 4.1 the suspension apply only to direct Covid-19 responses, as determined by the Treasury;
  - 4.2 the Treasury will work with departments to ensure that available relevant analysis is included in Cabinet papers to inform Ministers' decisions;
- 5 **noted** that the decisions in paragraphs three and four above do not alter the RIA requirements for any other government regulatory proposals;
- 6 **noted** that officials will develop advice on standing provisions for RIA in times of emergency.

The Cabinet minute has been published <sup>[39]</sup>

and a

banner message has been added to the CabGuide impact analysis page

<https://dpmc.govt.nz/publications/impact-analysis-and-regulatory-impact-statements>).

The Secretary to the Treasury, Caralee McLiesh, sent an email to chief executives on 26 March advising of this decision.

### Longer-term work - developing standing provisions for RIA in emergency circumstances

The Covid-19 pandemic has exposed a gap in the RIA requirements as they do not contemplate emergency situations. The suspension addresses this gap in the immediate circumstances, but for the longer term we need to improve the resilience and durability of the RIA arrangements, so that we are not again confronted with the need for temporary responses of this nature.

The Minister of Finance has instructed us to develop advice on how the RIA requirements should provide for future emergency situations. We will progress this work as Covid-19 and other more immediate priorities allow, and will be in touch with you in due course to seek your input. Our monitoring of the suspension and wider regulatory quality issues during this emergency will feed into this advice.