

TE TAI ŌHANGA  
THE TREASURY

# Guide to Cabinet's Impact Analysis Requirements

June 2020

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<https://treasury.govt.nz/publications/guide/guide-cabinets-impact-analysis-requirements>

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# 1. Introduction

This Guide is about how to meet Cabinet’s Impact Analysis Requirements for government policy initiatives that involve a proposal to create, amend or repeal primary or secondary legislation (a “regulatory proposal”).<sup>1</sup> These requirements are set out in the Cabinet Office circular: CO (20) 2: Impact Analysis Requirements <https://dpmc.govt.nz/publications/co-20-2-impact-analysis-requirements> and explained here with extra guidance.

Cabinet’s Impact Analysis Requirements support and inform the government’s decisions on regulatory proposals. They are both a process and an analytical framework that encourages a systematic and evidence-informed approach to policy development. The requirements incorporate the *Government Expectations for Good Regulatory Practice*.<sup>2</sup> In particular, the requirements focus on the expectation that agencies provide robust analysis and advice to Ministers before decisions are taken on regulatory change.

The key product of the requirements is a Regulatory Impact Statement. This is a government agency document which summaries an agency’s best advice on the Impact Analysis relating to a regulatory proposal. That Impact Analysis should be completed and summarised in a Regulatory Impact Statement before the Cabinet paper is drafted.

Cabinet’s Impact Analysis Requirements and this Guide are focused on ensuring high-quality Regulatory Impact Statements are provided to Ministers to support and inform their decisions on regulatory proposals.

For further advice or information on Cabinet’s Impact Analysis Requirements and Regulatory Impact Statements, see:

- Treasury’s Regulation webpage (<https://treasury.govt.nz/impact-analysis-requirements-regulatory-proposals>), or
- contact Treasury’s Regulatory Quality Team via [RIA.Team@treasury.govt.nz](mailto:RIA.Team@treasury.govt.nz)

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<sup>1</sup> See cl 2 of Legislation Bill (Government Bill 275-1) for the definition of “secondary legislation”.

<sup>2</sup> See <https://treasury.govt.nz/information-and-services/regulation/regulatory-stewardship/good-regulatory-practice>

## 2. How to use this Guide

Use this Guide to prepare Regulatory Impact Statements together with the Cabinet Office circular: CO (20) 2: Impact Analysis Requirements <https://dpmc.govt.nz/publications/co-20-2-impact-analysis-requirements>

Sections 3 and 4 of this Guide explain the purpose of Impact Analysis and Cabinet's Impact Analysis Requirements. They also summarise the topics covered by the requirements.

Sections 5 to 15 of this Guide set out the requirements in detail and explain how to meet them.

### 2.1. Policy development for regulatory proposals

This Guide focuses on how to meet the formal requirements for a regulatory proposal. For guidance on policy development of regulatory proposals, see:

- Guidance Note: Best Practice Impact Analysis  
<https://treasury.govt.nz/sites/default/files/2018-03/ia-bestprac-guidance-note.pdf>
- Guidance Note: Effective consultation for Impact Analysis  
<https://treasury.govt.nz/publications/guide/effective-consultation-impact-analysis>

Further guidance and tools for the development of policy (in general) are available on the Department of Prime Minister and Cabinet's the Policy Project webpage:  
[www.dpmc.govt.nz/our-programmes/policy-project](http://www.dpmc.govt.nz/our-programmes/policy-project)

The Policy Project can be contacted at [policy.project@dpmc.govt.nz](mailto:policy.project@dpmc.govt.nz).

### 2.2. Further information beyond this Guide

The templates for a Regulatory Impact Statement and forms to support the impact analysis requirements are on Treasury's Regulation webpage (<https://treasury.govt.nz/impact-analysis-requirements-regulatory-proposals>).

Developing effective policy interventions is a complex undertaking and the realities of the policy development process may at times differ from the process set out in this Guide. This Guide cannot address all potential issues that may arise in regulatory proposals or policy situations.

Consequently, there will be times when agencies will need to exercise their best judgement on how to give effect to the intent of Cabinet's Impact Analysis Requirements in the particular circumstances.

Some agencies have their own policy development processes and guidelines, and their Quality Assurance panels/specialists should be able to help with advice about individual cases. Otherwise, the Regulatory Quality Team is the authoritative source of general guidance on the development of regulatory proposals and can assist agencies with advice on individual cases, good practice in Impact Analysis, and on-going training.

The nature of the Regulatory Quality Team's involvement in individual 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 Cabinet's requirements, such as by providing comments on early commissioning documentation and draft Regulatory Impact Statements
- referring proposals to other agencies or specialists who have relevant expertise in regulatory quality issues or the subject matter.

The Regulatory Quality Team can be contacted via [RIA.Team@treasury.govt.nz](mailto:RIA.Team@treasury.govt.nz) or through your Treasury policy team, who should also be copied into correspondence.

The Treasury may issue more detailed, supplementary guidance on specific topics, where experience shows that such additional material would be helpful. For example, there is a range of guidance and tools available on Cost Benefit Analysis:

[www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis](http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis)

The Government Economic Network also provides training in some of the skills required for regulatory and other policy development and advice:

<https://gen.org.nz/upcoming-gen-training/>

### **2.3. Check online for the latest version**

This Guide will be updated periodically online, to keep it accurate and as helpful as possible. This version of the Guide was last updated in June 2020.

Check for the latest version of this Guide at <https://treasury.govt.nz/impact-analysis-requirements-regulatory-proposals>.

### **2.4. Your feedback is welcome**

We welcome your feedback on this Guide, 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.Team@treasury.govt.nz](mailto:RIA.Team@treasury.govt.nz)

### 3. The purpose of Impact Analysis and Cabinet's Impact Analysis Requirements

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

The Impact Analysis framework is recommended for any form of policy development process. It is also complementary to other approaches to improve policy quality, such as the Policy Project's Policy Quality Framework and agency-specific policy quality processes.

Impact Analysis is a formal requirement for regulatory proposals taken to Cabinet for approval.

Cabinet's Impact Analysis Requirements support and inform decisions by Ministers on regulatory proposals. The requirements and this Guide 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:

- the underlying problem or opportunity is properly identified, and is supported by available evidence
- all practical options to address the problem or opportunity have been considered
- all material impacts and risks of proposed actions have been identified and assessed in a consistent way, including possible unintended consequences
- it is clear why a particular option has been recommended over others.

The requirements also contribute to the transparency and accountability of government through the routine publication of Regulatory Impact Statements.

### 3.1. Expectations for designing and implementing regulation

The Government Expectations for Good Regulatory Practice

<https://treasury.govt.nz/information-and-services/regulation/regulatory-stewardship/good-regulatory-practice> outline how agencies should design and implement regulation. These expectations form the basis of the Impact Analysis framework:

*Before a substantive regulatory change is formally proposed, the government expects regulatory agencies to provide advice or assurance on the robustness of the proposed change, including by:*

- assessing the importance of the issue in relation to the overall performance and condition of the relevant regulatory system(s), and how it might fit with plans, priorities or opportunities for system improvement already identified;
- clearly identifying the nature and underlying cause of the policy or operational problem it needs to address, drawing on operational intelligence and available monitoring or review information;
- undertaking systematic impact and risk analysis, including assessing alternative legislative and non-legislative policy options, and how the proposed change might interact or align with existing domestic and international requirements within this or related regulatory systems;
- making genuine effort to identify, understand, and estimate the various categories of cost and benefit associated with the options for change;
- identifying and addressing practical design, resourcing and timing issues required for effective implementation and operation, in conjunction with the regulator(s) who will be expected to deliver and administer the changes;
- providing affected and interested parties with appropriate opportunities to comment throughout the process and, in the right circumstances, to participate directly in the regulatory design process (co-design); and
- use of “open-book” exercises to allow potential fee or levy paying parties to scrutinise the case for, and structure and level of, proposed statutory charges.

## 4. Overview of Cabinet’s Impact Analysis Requirements

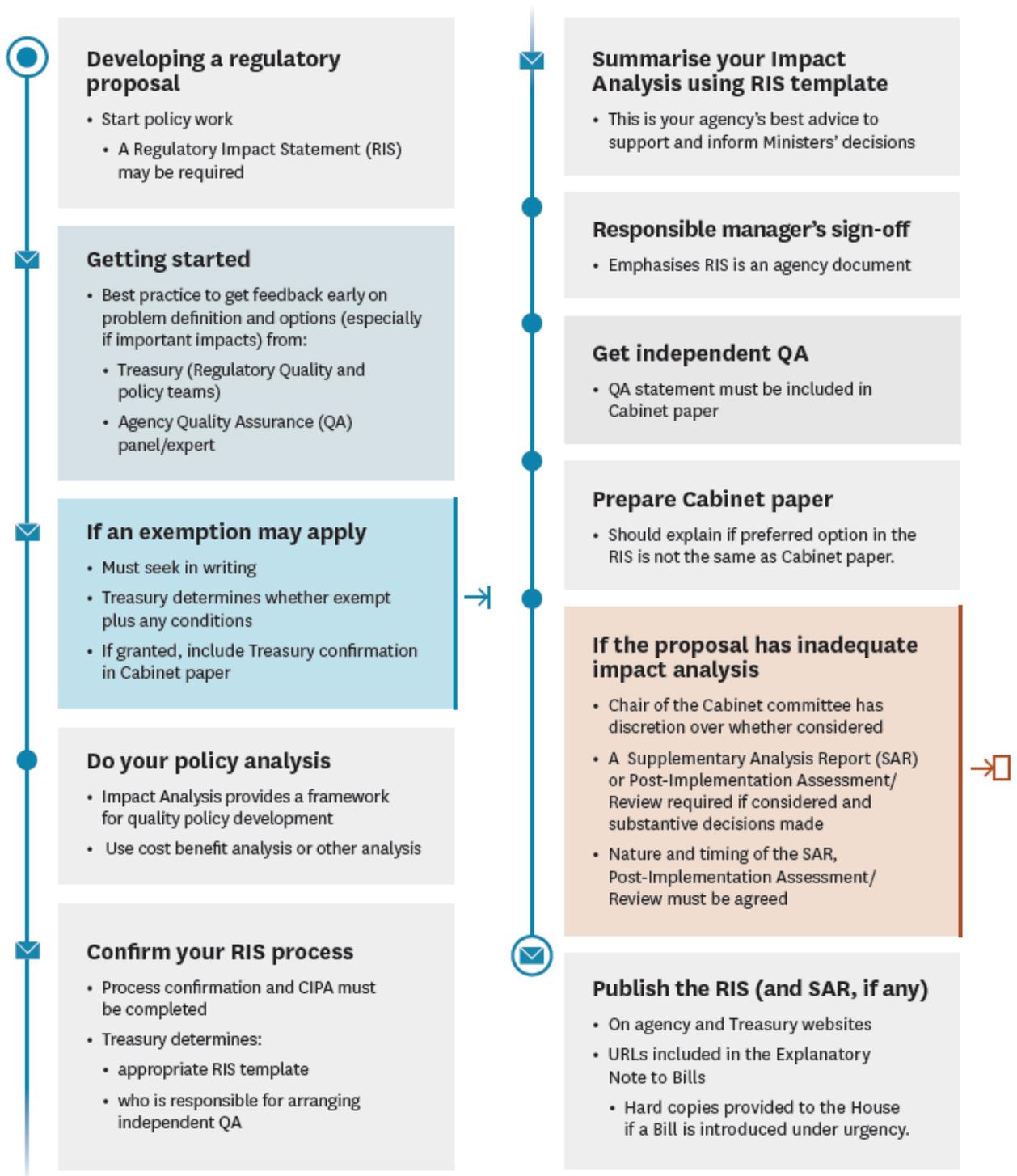
The Cabinet Office circular: [CO \(20\) 2: Impact Analysis Requirements](#) sets out the requirements for when and how to perform Impact Analysis for regulatory proposals.

This Guide sets out the requirements in more detail than the Cabinet Office Circular and provides information to help you succeed in producing a high-quality Regulatory Impact Statement.

It covers the following areas:

- **Developing a regulatory proposal:** what a Regulatory Impact Statement is, and how they are required for most regulatory proposals
- **Getting started:** seeking early feedback on problem definition and options on problems with important impacts and early process confirmation
- **Exemptions from providing a Regulatory Impact Statement:** understanding situations where a Regulatory Impact Statement is not required, and the process for requesting an exemption
- **Confirming your Regulatory Impact Statement process:** confirming the appropriate Regulatory Impact Statement template and whether the agency or Treasury is responsible for arranging Quality Assurance
- **Completing the Climate Implications of Policy Assessment (CIPA) early engagement form:** to determine whether a CIPA is required for your proposal
- **Preparing the Regulatory Impact Statement:** preparing the required content for your Regulatory Impact Statement and completing the appropriate template
- **Quality Assurance arrangements:** obtaining independent Quality Assurance for your Regulatory Impact Statement and understanding the assessment criteria used, as well as guidance for assessors
- **Preparing the Cabinet paper:** filling in the “Impact Analysis” section of the Cabinet paper, including documenting any exemptions
- **Regulatory proposals with inadequate Impact Analysis:** the value of giving an early warning, and the process for a Supplementary Analysis Report or post-implementation assessments/review if required
- **Publication of Regulatory Impact Statements (and Supplementary Analysis Reports, if any):** when and how to publish Regulatory Impact Statements and notes the requirements for Disclosure Statements for Government Legislation.

## Cabinet's Impact Analysis Requirements at a glance



## 5. Developing a regulatory proposal

Impact Analysis is required for any government policy initiative that includes consideration of regulatory options (that is, options that will ultimately create, amend, or repeal primary or secondary legislation).

Cabinet papers that include a regulatory proposal must be accompanied by a Regulatory Impact Statement, unless an exemption applies (see Section 7 *Exemptions from providing a Regulatory Impact Statement*).

This includes papers submitted to Cabinet that involve:

- 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
- decisions to create, or amend, a statutory authority to charge third parties to cover the costs of a government activity (ie, cost recovery proposals)
- decisions on discussion documents that have the effect of narrowing down the range of options, including regulatory options being considered
- “in principle” policy decisions and intermediate policy decisions, particularly those where regulatory options are narrowed down (eg, limiting options for further work/consideration)
- seeking negotiating mandates for, concluding, or seeking approval to sign, an international treaty with regulatory impacts
- secondary legislation made by a Minister under an enabling power in an Act and the Minister’s decision is referred to Cabinet for noting.
- decisions about a regulatory proposal that has previously been announced, for example by a Minister or in a political party manifesto

A Regulatory Impact Statement must be provided when papers are submitted to Cabinet committees (or a similar Ministerial group) 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 (LEG).

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 Statement should be updated to indicate how the changes affect the agency’s Impact Analysis (eg, how they alter the nature and/or magnitude of the impacts).

You should also contact the Regulatory Quality Team to discuss the Impact Analysis requirements when a proposal is to be submitted to Cabinet seeking a decision on whether a Member’s Bill should be adopted as a Government Bill.

## 6. Getting started

How you scope and plan your process will have a strong bearing on the quality of the product. Incomplete problem definitions, and failure to consider all feasible options are frequent causes of inadequate Impact Analysis. These problems cannot be easily fixed late in the policy process.

The Regulatory Quality Team and your Treasury policy team are available to provide feedback and advice on these areas through the early engagement process.

Early engagement should be part of your early thinking (or your *Start Right* process – see paragraph 6.4 below), and therefore ideally occurs well before a decision is made to pursue a regulatory solution that might require your agency to prepare a Regulatory Impact Statement.

### 6.1. When, how and with whom to engage

Early in your policy process you will develop a problem definition and identify likely options. We strongly advise you ask the Treasury to test your initial ideas before you proceed further with the analysis, and suggest you also seek feedback from your agency's Quality Assurance panel/specialist.

This feedback will be especially valuable when your agency considers that the problem is materially important in terms of its human, social, economic or environmental impacts, and your policy process is likely to explore options to introduce, amend or repeal legislation.

You will have to decide when the best time to get feedback is, but ideally it would be both:

- after tentative decisions have been made to pursue action or commission a policy project
- before your agency is committed to a particular approach.

You may use the Early Engagement for Impact Analysis Form on Treasury's Regulation webpage <https://treasury.govt.nz/impact-analysis-requirements-regulatory-proposals>, an equivalent agency document, or a document from the *Start Right* toolkit if it covers the same material.

### 6.2. Using early feedback to check you are on track

The feedback will focus on the types of things a Quality Assurance panel would look for in the final assessment of the problem definition and options identification.

At this early engagement point the feedback is not a formal assessment. Instead, it will indicate whether the work is broadly on the right track, and where more analysis or information might be needed. The feedback may do one or more of the following:

- suggest areas for further exploration
- refer you to analogous analysis undertaken in other policy areas

- suggest contacts in other agencies who may also be able to provide useful early input
- pose questions around gaps in logic, evidence, data, etc.

Depending on the issues, there will likely be discussions in addition to written feedback. If there are serious concerns at this stage, the feedback will identify them.

Seeking and responding to feedback may create extra work in the early stages of your impact analysis. But if the feedback identifies potential weaknesses or missing elements, then it will save time and effort later in the process, and help you provide your Minister with robust advice.

Another benefit of early engagement is as a ‘heads up’ to both Treasury and your Quality Assurance panel/specialist about what is in the pipeline. This helps reviewers plan their work and can speed up the turnaround time for the formal Quality Assurance process.

When you seek feedback, please indicate your timeframe. Provided that your timeframe is reasonable, the Treasury will make best-endeavours to respond.

### **6.3. Early confirmation of your Regulatory Impact Assessment process**

As part of your early engagement, the Regulatory Quality Team may determine whether a Regulatory Impact Statement is required and, if so, the appropriate template and who is responsible for arranging Quality Assurance. Where possible, the Regulatory Quality Team will confirm this as part of their early feedback.

### **6.4. Other early considerations in the policy process**

The Policy Project also recognises the potential for early, robust consideration to efficiently drive improvements to policy quality. The Policy Project’s *Start Right* is a set of tools and guidance designed to assist policy practitioners to consider all the important drivers of policy quality early in the policy-making process. *Start Right* covers both regulatory and non-regulatory policy, and is both compatible with, and supportive of, the Impact Analysis process.

*Start Right* recommends early “Validation and Testing” activities relating to the assessment of the policy problem / opportunity and key assumptions. You may find it useful to use these tools as part of your impact analysis process.

For more information, see the Policy Project webpage (<https://dpmc.govt.nz/our-programmes/policy-project>) or contact [policy.project@dpmc.govt.nz](mailto:policy.project@dpmc.govt.nz).

## 7. Exemptions from providing a Regulatory Impact Statement

Impact Analysis is encouraged and always recommended in the development of advice on any form of government policy initiative. However, a Regulatory Impact Statement is not required for certain types of regulatory proposals.

Exemptions are granted by Treasury. You must apply to the Regulatory Quality Team for an exemption and provide evidence of being granted that exemption to Cabinet.

### 7.1. Grounds for an exemption

The grounds for an exemption are grouped under the following categories:

- technical or case-specific
- minor impacts
- discretionary.

Technical and minor impacts exemptions are complete and unconditional. Where RQT grants a discretionary exemption, conditions may be imposed.

In June 2020 Cabinet agreed new “technical” and “discretionary” exemptions available to be activated in situations of, or in response to, a declared emergency. These exemptions are explained further below.

#### *Technical or case-specific exemptions*

A Regulatory Impact Statement is not required where a government regulatory proposal:

1. is suitable for inclusion in a Revision Bill (as provided for in the Legislation Act 2012)
2. is suitable for inclusion in a Statutes Amendment Bill (as provided for in Standing Orders)
3. would repeal or remove redundant legislative provisions
4. provides solely for the commencement of existing legislation or legislative provisions
5. is solely a request to authorise spending in Appropriation or Imprest Supply Bills
6. is solely a request to confirm secondary legislation that has already been made
7. implements deeds of settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements
8. brings into effect recognition agreements under the Marine and Coastal Area (Takutai Moana) Act 2011

These exemptions relate to the particular circumstances of a regulatory proposal. They include technical adjustments to improve the enforceability or clarity of existing law and transitional arrangements.

### *Technical exemptions only available for an emergency*

A Regulatory Impact Statement is not required where a government regulatory proposal is:

1. to make, amend, or to modify or suspend the effect of, primary or secondary legislation, under powers only able to be exercised by the government during a declared emergency or emergency transition period
2. to do one or more of the following:
  - 2.1 temporarily defer or extend legislative deadlines, or
  - 2.2 provide limited temporary exemptions or modifications to existing legislative requirements, or
  - 2.3 temporarily enable alternative methods of legislative compliancein situations where a declared emergency has made compliance with the existing legislative requirements impossible, impractical or unreasonably burdensome
3. to temporarily defer the start date of legislative requirements not yet in force, in order to reduce burdens, or where the Government or affected entities will no longer be ready by the planned start date, as a result of an emergency.

These emergency technical exemptions are specifically designed for urgent regulatory changes in an emergency. They draw on the experience of COVID-19 and other emergencies such as the Christchurch earthquakes.

Proposals covered by exemption 1 would include new instruments required to manage or contain an emergency. For example, Orders made by the Director-General of Health exercising the functions of a Medical Officer of Health to prevent the outbreak or spread of an infectious disease under section 70 of the Health Act. They would also include proposed modifications to existing legislation, such as allowed by Immediate Modification Orders provided for in the Epidemic Preparedness Act.

Proposals covered by exemptions 2 and 3 are some of the most common temporary legislative changes sought in recent declared emergencies. While the changes must be temporary, measures covered by these two categories of exemption need not necessarily come to an end when the emergency itself formally ends.

Note that the actual statutory declaration of an emergency is not included in the proposed technical exemption. These declarations already fall outside the scope of the regulatory impact analysis requirements, as they are not treated as secondary legislation and do not normally come to Cabinet for approval.

## **Minor impacts exemption**

Regulatory proposals that have no impacts, or only minor impacts, on businesses, individuals or not-for-profit entities do not require a Regulatory Impact Statement.

This is the most commonly used exemption. It is sometimes referred to as the “catch-all” exemption – the proposal does not fit the criteria for the other exemptions, but given the circumstances, it is likely to have “no or minor” impacts.

The meaning of “no or minor impacts” is subjective. Often common sense will dictate whether the impacts of a regulatory change are actually minor. Ultimately this interpretation is decided by the Regulatory Quality Team based on information provided by, and/or discussion with, the agency.

A wide variety of proposals fall under this exemption. Common themes include:

- technical adjustments that do not fall under the technical or case-specific exemptions but are likely to have no or very low impacts
- changes to the internal administrative or governance arrangements of the New Zealand government which are likely to have no or very low impacts outside of government (eg, the transfer of responsibilities, staff, or assets between government agencies)
- changes to statutory governance arrangements being implemented through a Treaty of Waitangi settlement where these changes are likely to have no or only minor impacts.

You may encounter marginal cases, or instances where the nature of the changes makes it less certain what the impacts will be. In these situations, the minor impacts exemption is more likely to apply where the proposal meets one of the following conditions:

- it has localised impacts, or the implications are limited to a small group of affected people or parties
- it clarifies an area of current law, or amends the purpose statement of legislation, consistent with the objectives of that regulatory system
- it codifies, rather than changes, an existing practice
- the Net Present Value is expected to be low over the medium-term (when all of the impacts can be monetised).

Conversely, the minor impacts exemption is unlikely to apply where the proposal’s effects include any of the following:

- having regional or national impacts or widespread implications;
- substantially altering the nature or objectives of the relevant regulatory system;
- creating or amending the legal rights or responsibilities of government agencies or agency chief executives
- affecting policy processes which are public facing (eg, consultation requirements).

This does not preclude the proposal from being exempt on other grounds.

## **Discretionary exemptions**

Discretionary exemptions may be granted subject to conditions as determined by the Regulatory Quality Team following discussions with you. Conditions are determined case-by-case. Relevant factors include the timeframe for development and implementation of the proposal, the extent and nature of likely impacts, and the degree of uncertainty, risks or novelty of the proposal.

A Regulatory Impact Statement **may** not be required where both of the following apply:

- the regulatory proposal fits within one of the following situations:
  - i. the relevant issues have already been adequately addressed by existing Impact Analysis
  - ii. a Regulatory Impact Statement would substantively duplicate other government policy development, reporting and publication requirements or commitments
  - iii. the government has limited statutory decision making discretion or responsibility for the content of proposed delegated legislation.
- **And** 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.

The following paragraphs provide some further information on when these discretionary exemptions may apply.

### ***i. The relevant issues have already been adequately addressed by existing Impact Analysis***

This is most likely to arise where:

- final decisions are being made post-consultation, where Impact Analysis has already been provided to Cabinet before that consultation
- decisions are being made about the content of delegated legislation that had some previous consideration when the enabling power to make delegated legislation was proposed.

In cases like these, conditions could require that additional information and analysis is provided to update or supplement the previous RIS.

***ii A Regulatory Impact Statement would substantively duplicate other government policy development, reporting and publication requirements or commitments***

This is likely to include situations where:

- a business case is required for a project involving substantial capital investment
- an extended National Interest Analysis<sup>3</sup> is required.

***iii The government has limited statutory decision-making discretion or responsibility for the content of proposed delegated legislation***

This is likely to include situations where government is:

- making the minimum necessary legislative changes required to comply with international obligations that, due to previous treaty actions, are automatically binding on New Zealand
- approving proposals developed through a statutory process done by an external party with statutory authority for that process.

***Discretionary exemption available for an emergency***

A Regulatory Impact Statement **may** not be required where the Regulatory Quality Team is satisfied that a government regulatory proposal, not covered by other existing Regulatory Impact Statement exemptions, is:

- intended to manage, mitigate or alleviate the short term impacts of a declared emergency event or of the direct actions taken to protect the public in response to a declared emergency event; and
- required urgently to be effective (making a complete, robust and timely Regulatory Impact Statement unfeasible).

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<sup>3</sup> 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 (NIA). Drafting Guidelines produced by the Ministry of Foreign Affairs (MFAT) in collaboration with the Regulatory Quality Team require that, for treaties with regulatory impacts, the NIA also includes all the requirements which would otherwise be considered in a Regulatory Impact Statement (becoming an “extended NIA”). A separate, standalone Regulatory Impact Statement is therefore not required when an extended NIA is prepared.

The International Treaty Making Guide, which includes the NIA drafting instructions, contains guidance on how Cabinet’s Impact Analysis Requirements apply to treaties. For questions regarding international treaties and arrangements, please contact the Treaty Officer in the MFAT Legal Division ([treatyofficer@mfat.govt.nz](mailto:treatyofficer@mfat.govt.nz)).

This discretionary exemption may be granted subject to conditions, which may include, as appears most feasible or appropriate:

- the provision and/or publication of some alternative information, or limited impact analysis in alternative form (which could be provided to Cabinet, to Ministers with delegated power to act, or others as appropriate); and/or
- a commitment to include a suitable sunset provision and/or undertake a post-implementation assessment or review on agreed terms and timing.

This discretionary exemption recognises that some regulatory changes sought in emergency or emergency transition situations may fall outside the grounds of the technical exemptions, but may still warrant an exemption or conditional exemption due to obvious urgency.

Such changes will usually be temporary, narrowly focussed, and seek to support, protect, or reduce the burden of compliance on newly vulnerable or heavily impacted groups or areas. For example, this could cover the sorts of changes made in response to COVID-19 to support the mortgage repayment deferral scheme or the business debt hibernation regime. It could also cover proposals to waive or reduce statutory fees or charges imposed by the government.

## 7.2. Applying for an exemption

If you consider one of the exemptions may apply to your regulatory proposal (or aspects of the proposal), you should apply for an exemption from Treasury. You can do this by contacting the Regulatory Quality Team ([RIA.Team@treasury.govt.nz](mailto:RIA.Team@treasury.govt.nz)). Please also copy in your Treasury policy team into any correspondence.

The Impact Analysis (IA) Exemption Application Form on Treasury's Regulation webpage <https://treasury.govt.nz/impact-analysis-requirements-regulatory-proposals> will assist with applying for an exemption. This form enables you to state for each proposal, which exemption you are seeking and why you consider it applies. Alternatively you can provide this information directly in your email to the Regulatory Quality Team.

The Regulatory Quality Team considers the information you have provided and, if necessary, may request further information or clarification.

If you are seeking one of the discretionary exemptions, there may be further discussion needed with the Regulatory Quality Team. These discussions will include matters such as:

- how Cabinet's Impact Analysis Requirements have already been met
- why further Impact Analysis is not the best and most cost-effective way to provide Ministers with information relevant to their decision-making
- the extent to which Government's decision-making discretion or responsibility has been constrained

- the potential conditions of any discretionary exemption (ie, the provision and/or publication of some alternative information, or limited impact analysis in alternative form. For the emergency discretionary exemption, this may include a sunset provision and/or post-implementation assessment or review).

The Regulatory Quality Team will then determine whether and to what extent a regulatory proposal, or aspects of it, is exempt from the requirement to provide a Regulatory Impact Statement. If it is a discretionary exemption, the Regulatory Quality Team will also determine any conditions of the exemption and the timing for fulfilling those conditions. This timing will largely depend on the timing of the decisions the conditions are intended to assist.

Note, if you do not apply for an exemption, or you are not granted one, *and* a Regulatory Impact Statement is not submitted along with the Cabinet paper seeking policy approval, then it will be subject to the process for proposals with inadequate Impact Analysis (see Section 13 *Regulatory proposals with inadequate Impact Analysis*).

### **7.3. Next steps if exemption is granted**

If your proposal is granted an exemption, the Regulatory Quality Team will provide you with a statement setting out that decision which you need to include in the Cabinet paper. If relevant, this statement will also outline any of the conditions of that exemption.

If the proposal is exempt subject to conditions, you will need to fulfil the conditions of the exemption and advise the Regulatory Quality Team when you have done so. Depending on the nature of the conditions, you may be required to do this before or after the relevant Cabinet paper is submitted. For example, the condition may be that you publish and consult on an exposure draft of the proposed legislation before seeking Cabinet Legislation Committee (LEG) approval.

If an exemption is not granted, the Regulatory Quality Team will advise you which Regulatory Impact Statement template you will need to complete, and whether the Regulatory Quality Team or your agency will be responsible for arranging Quality Assurance of that Regulatory Impact Statement.

If there is not enough information to decide this, the Regulatory Quality Team will request further information from you as part of the process described in the next section of this Guide.

## 8. Confirming your Regulatory Impact Statement process

Treasury determines the appropriate Regulatory Impact Statement template and responsibility for arranging independent Quality Assurance based on information you provide about your processes and on the particular proposal. These decisions are made by the Regulatory Quality Team at the same time using the one process. It is best to seek these decisions as soon as possible in your policy process – before drafting the Cabinet paper.

For further information on the templates for a Regulatory Impact Statement see Section 9 *Preparing a Regulatory Impact Statement*. For further information on potential Quality Assurance arrangements see Section 10 *Obtaining independent Quality Assurance*.

### 8.1. The confirmation process

Once it is clear that Cabinet's Impact Analysis Requirements apply to your proposal or aspects of it, you will need to provide information to the Regulatory Quality Team to enable these template and Quality Assurance decisions.

The Regulatory Quality Team will determine the appropriate template for the Regulatory Impact Statement, and whether your agency or the Treasury is responsible for arranging Quality Assurance, taking into account the following factors:

- your agency's policy capability and the demonstrated robustness of its in-house Quality Assurance processes
- the strength of your agency's regulatory stewardship practice in the affected regulatory system
- the robustness of your planned policy process
- the level of significance of the likely impacts of the regulatory options
- the levels of risk or uncertainty around the likely impacts of the regulatory options.

The Regulatory Quality Team will make these decisions based on the information you provide using the Impact Analysis (IA) Process Confirmation Form on Treasury's Regulation webpage <https://treasury.govt.nz/impact-analysis-requirements-regulatory-proposals>. Please send the completed form to the Regulatory Quality Team ([RIA.Team@treasury.govt.nz](mailto:RIA.Team@treasury.govt.nz)), copied to your Treasury policy team.

If necessary, you may be asked for additional information, or the Regulatory Quality Team may discuss the information and options with you. If none of the templates are suitable for your proposal, the Regulatory Quality Team will discuss that with you and may agree an alternative approach (see section 8.2 below).

Decisions on your Regulatory Impact Statement process are not necessarily final as they are made on the basis of knowledge and assumptions about the policy process at that time. If any of these factors change, for instance, timeframes become compressed, or additional policy options are included, you must advise the Regulatory Quality Team and the decisions will be reviewed.

If you have any issues or concerns about these decisions, please go back to the Regulatory Quality Team to discuss.

## **8.2. Completing the Climate Implications of Policy Assessment (CIPA) early engagement form**

The IA Process Confirmation Form on Treasury's Regulation webpage <https://treasury.govt.nz/impact-analysis-requirements-regulatory-proposals> is adjacent to a tab for the CIPA early engagement form.

If you have not already completed this form, you should fill it out at the same time as you complete the IA Process Confirmation Form.

The purpose of this form is to help determine if a climate implications of policy assessment needs to be completed, in accordance with Cabinet's requirements that central government agencies must undertake and report in the Impact Analysis section of the Cabinet paper on a greenhouse gas (GHG) emissions analysis, known as a CIPA, for all policy proposals that meet certain qualifying criteria.

For further information on Cabinet's CIPA requirements, see:

- The Ministry for the Environment's webpage (<https://www.mfe.govt.nz/climate-change/climate-implications-policy-assessment>), or
- Contact the Ministry for the Environment's CIPA team via [CIPA@mfe.govt.nz](mailto:CIPA@mfe.govt.nz).
- Email your completed CIPA early engagement form to the Regulatory Quality Team ([RIA.Team@treasury.govt.nz](mailto:RIA.Team@treasury.govt.nz)) and to [CIPA@mfe.govt.nz](mailto:CIPA@mfe.govt.nz).

### 8.3. Agreeing departures from the templates

The Regulatory Quality Team may agree on a case-by-case basis to depart from the Regulatory Impact Statement templates.

Impact Analysis is required for a wide range of subject areas and to achieve many different objectives. In some cases, it is likely that these standardised templates will be unnecessarily and inappropriately constraining. For example:

- several different aspects of a single problem are addressed and cannot easily be separated into several single-issue impact statements because of their interdependence
- the regulatory decision is about whether, or to what extent, Parliament should delegate its legislative power on a particular matter, and who is best placed to exercise that power appropriately. (Here the level and nature of impacts on the so-called “winners” and “losers” is largely the same. Instead, the analysis is more likely to focus on issues like relative credibility and expertise, certainty versus flexibility, constitutional propriety, and appropriate safeguards.)

In such cases it may be necessary for the agency and the Regulatory Quality Team to work together to develop case-specific tailored approaches that better reflect the type of Impact Analysis that is appropriate to the proposal.

The Regulatory Quality Team is monitoring these instances to determine what, if any, further adjustments may be needed, and further guidance to provide.

## 9. Preparing a Regulatory Impact Statement

The Regulatory Impact Statement, whichever template is used, is a government agency document, as distinct from a Cabinet paper, which is a Minister's document.

A Regulatory Impact Statement presents the outcomes of your Impact Analysis process and provides a summary of your agency's best advice to your Minister and Cabinet on the problem definition, objectives, identification and analysis of the range of feasible options, and information on implementation arrangements. By contrast, the Cabinet paper presents the Minister's advice or recommendations to Cabinet.

The purpose of the Regulatory Impact Statement is to:

- provide the basis for consultation with stakeholders, and with other government agencies
- provide the basis for engagement with Ministers and therefore help to inform 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)
- enhance the transparency of, and accountability for, decision making, through public disclosure once decisions are taken.

The Regulatory Impact Statement 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.

In some cases, it will be helpful to start work on drafting the Regulatory Impact Statement early on in the Impact Analysis process, building up the drafting as you go along. In other cases, it may be more suitable to put together the Regulatory Impact Statement at a later stage when policy development is further advanced and proposals are ready to be put to Ministers.

You may also find it useful to use the Regulatory Impact Statement format as a vehicle for providing advice to the portfolio Minister during the course of policy development.

Efficient and effective consultation must also have taken place when carrying out Impact Analysis and the results of this set out in the Regulatory Impact Statement. Further guidance on consultation can be found in the Guidance Note on Effective Consultation for Impact Analysis <https://treasury.govt.nz/publications/guide/effective-consultation-impact-analysis>

## 9.1. Standard templates

Your Impact Analysis must be provided alongside the Cabinet paper, and unless agreed otherwise with the Regulatory Quality Team, the analysis will be presented using one of the standard templates. The Regulatory Impact Statement templates are available on Treasury's Regulation webpage <https://treasury.govt.nz/impact-analysis-requirements-regulatory-proposals>

The standard templates are designed to tailor the form and content of the Impact Analysis to the significance and nature of the regulatory proposal. The four templates are the Impact Summary, the Full Impact Statement, and the stage 1 and 2 Cost Recovery Impact Statements.

### *The Impact Summary*

The [Impact Summary](#) contains many of the elements of the Regulatory Impact Statement, but analyses the impacts of the preferred option only; that is, the option proposed in the Cabinet paper. This template encourages brevity and does not require extensive analysis of alternative options. It may be more appropriate where:

- there was a good, sound, well consulted policy process
- you have identified a clear preferred option, and
- this option is recommended in the Cabinet paper.

### *The Full Impact Statement*

The [Full Impact Statement](#) requires analysis of all the feasible options. The template includes a coversheet which highlights the issues decision-makers need to readily access, and helps them to identify the aspects of the Full Impact Statement that they may wish to closely scrutinise. This template provides for a more comprehensive summary of your Impact Analysis.

It is most likely to be required where the proposed changes are significant and/or novel, and is also more likely when there is no clear preferred option or the preferred option is different from the one recommended in the Cabinet paper.

### *The stage 1 Cost Recovery Impact Statement*

The [stage 1 Cost Recovery Impact Statement](#) is designed specifically for proposals seeking policy agreement to recover costs, but not yet seeking policy agreement on cost recovery levels (ie, agreement on cost recovery levels will be sought at a later date).

### *The stage 2 Cost Recovery Impact Statement*

The [stage 2 Cost Recovery Impact Statement](#) is designed specifically for proposals seeking agreement on cost recovery levels.

## 9.2. Required content

The templates include guidance notes and advice on how to fill them out. This advisory text should be deleted in the final form of the Regulatory Impact Statement.

Your Impact Analysis should be completed and summarised in a Regulatory Impact Statement before the Cabinet paper is drafted. Further guidance on how to do Impact Analysis can be found in the Guidance Note on Best Practice Impact Analysis <https://treasury.govt.nz/sites/default/files/2018-03/ia-bestprac-guidance-note.pdf>

## 9.3. Consultation and circulation

The Regulatory Impact Statement summarises the Impact Analysis that you have already done, and therefore will reflect the results of your consultation to date. The completed templates themselves provide a vehicle for further consultation as appropriate with affected parties and with government agencies.

You will ideally circulate the draft Regulatory Impact Statement for comment to relevant government agencies before the Cabinet paper is prepared.

You must circulate your Regulatory Impact Statement to interested agencies with the draft Cabinet paper.

## 9.4. Manager sign-off and agency disclosure

The following two requirements emphasise that the Regulatory Impact Statement is an agency document, not a Ministerial one, and that its quality and the analysis in it is the responsibility of the policy team and the responsible manager.

- The Regulatory Impact Statement must be signed off by a manager for the responsible agency. There is a space in the templates for their signature.
- You must also disclose information about any key gaps, assumptions, dependencies and significant constraints, caveats or uncertainties regarding the Impact Analysis. The templates provide space for this information.

# 10. Obtaining independent Quality Assurance

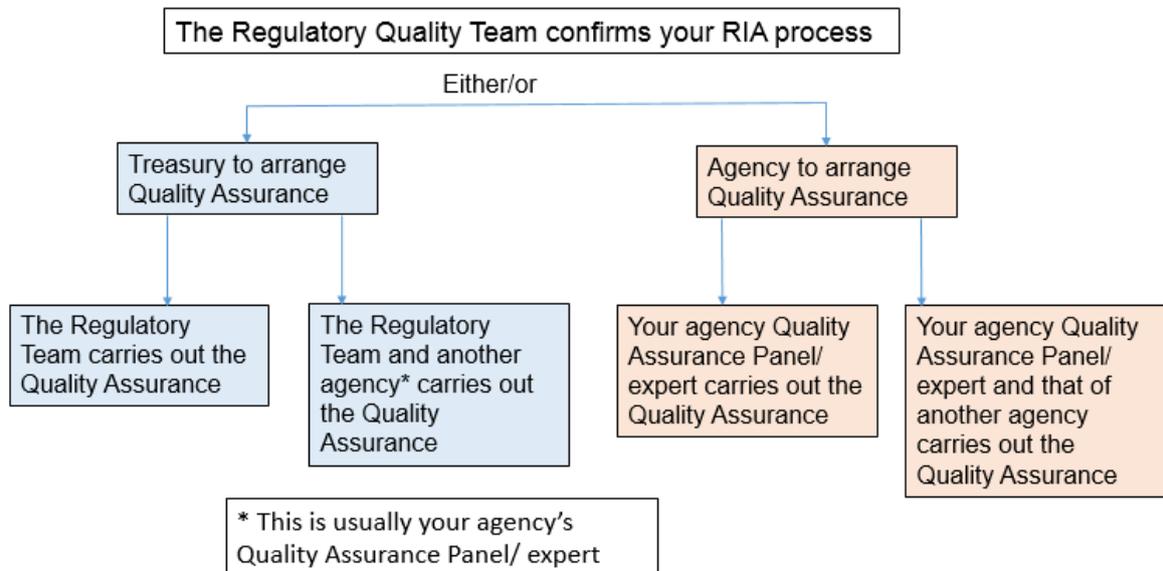
Independent Quality Assurance is a key part of Cabinet’s Impact Analysis Requirements. It helps Ministers determine the confidence they can have in the analysis, bearing in mind the decisions they are asked to make.

Regulatory Impact Statements must be independently assessed as to whether they are appropriately complete, convincing, clear and concise, and consulted (see Section 11 *Guidance for Quality Assurance assessors*). This Quality assurance must take place before the Regulatory Impact Statement is lodged with the Cabinet paper.

If your Regulatory Impact Statement is not independently quality assured before it is lodged with the Cabinet paper then it will be subject to the process for proposals with inadequate Impact Analysis (see Section 13 *Regulatory proposals with inadequate Impact Analysis*).

## 10.1. Quality Assurance arrangements

The Regulatory Quality Team will determine whether your agency or the Treasury, or some combination of the two, will be responsible for arranging independent Quality Assurance. Smaller agencies may need assistance with obtaining quality assurance – if so, please contact the Regulatory Quality Team. Once this has been decided, there are a range of possible arrangements for carrying out that quality assurance depending on what is most appropriate.



Quality Assurance may be done by:

- the Regulatory Quality Team
- internal Quality Assurance panels within agencies
- panels made up of people from several agencies
- an individual assigned as the Quality Assurance specialist, who may be inside or outside of the agency (especially in the case of smaller agencies).

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 the policy process for the proposal.

A permanent internal panel may not be possible for all agencies. Another option is to identify a pool of experienced people who can be drawn on, on an *ad hoc* basis. This pool could include people from other agencies (not just internally sourced). The Regulatory Quality Team can help to facilitate this.

Outsourcing independent Quality Assurance such as from a private sector consultant or subject matter expert (eg, academic) may be appropriate for some large or complex pieces of work, or for small agencies where conflicts of interest are difficult to avoid. In these circumstances, it is important that the assessors are familiar with Cabinet's Impact Analysis Requirements and with the Quality Assurance criteria (see Section 11.4 *What Quality Assurance involves*).

The extent, nature and timing of Quality Assurance assessors' involvement in the quality assurance process and the number of times they consider the draft RIS is likely to vary.

## 10.2. Independent Quality Assurance

An assessment of the overall quality of the Regulatory Impact Statement is made by independent assessors on whether it is complete, convincing, consulted, and clear and concise. The same Quality Assurance criteria (<https://treasury.govt.nz/information-and-services/regulation/impact-analysis/quality-assurance-ria>) are used regardless of the template used for the Regulatory Impact Statement or who independently assesses it. These Quality Assurance criteria are discussed in 11.4 *What Quality Assurance involves*.

The outcome of the Quality Assurance process will be a formal statement from the Quality Assurance assessors on the quality of the Impact Analysis. You must copy this (without edits) into the "Impact Analysis Requirements" section of the Cabinet paper.

The Quality Assurance statement sets out whether the assessors consider the information and analysis summarised in the Regulatory Impact Statement is sufficiently comprehensive, robust and effectively communicated to enable Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

The Quality Assurance statement is not a comment on the merit of the regulatory proposals themselves. This remains the responsibility of the policy team. Quality Assurance should be undertaken before final advice is provided to the portfolio Minister.

You should contact your Quality Assurance assessors to let them know the nature and timing of your Regulatory Impact Statement. It is best to keep them informed of your progress.

You will ideally have already been in touch with the relevant people in your agency, for instance, during the *Start Right* process. Your agency may also provide people with experience in Impact Analysis to assist you as coaches during the process, and to assist you in the various stages where you have been engaging with the Regulatory Quality Team.

Your assessors may have some specific rules or guidelines on how you should engage with them, including how much time to allow for the Quality Assurance. It's important that you allow time for several iterations, as it is not often that Quality Assurance is completed with only one round of comments. There are usually several rounds of back and forth, drafting and amendments before the assessors provide their final assessment.

As well as sight of draft Regulatory Impact Statements, the Quality Assurance assessors may ask you for additional material to test statements made about the Impact Analysis. For example, the assessors may wish to view evidence that has been cited or referenced, assumptions and calculations underlying the cost benefit analysis, or the summary of stakeholder submissions. This enables the assessors to be assured that the analysis is accurate and robust.

The Quality Assurance assessors will need to know what the Cabinet paper is asking ministers to decide so that they can assess the extent to which the RIS will assist ministerial decision-making.

### 10.3. Meeting the consultation criteria

Agencies proposing new or changed 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)
- 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.

As indicated in the Regulatory Impact Statement templates, you are expected to report on the results of consultation and your responses to the issues raised.

# 11. Guidance for Quality Assurance assessors

This section contains advice on providing independent Quality Assurance of Regulatory Impact Statements. Much of the advice also applies to reviewing other forms of policy documentation, such as discussion documents.

## 11.1. Why independent Quality Assurance is done

Cabinet requires that independent Quality Assurance is undertaken on all Regulatory Impact Statements.

The purpose of independent Quality Assurance is to advise Cabinet on whether 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, and has not been involved in the policy process for the proposal) has considered whether the analysis and information summarised in the Regulatory Impact Statement are of a sufficient standard to properly inform the decisions being taken. This independent assessment is summarised in a formal Quality Assurance statement that is included in the Cabinet paper accompanying the Regulatory Impact Statement.

## 11.2. Who should undertake independent Quality Assurance

The Regulatory Quality Team will determine whether the authoring agency or the Treasury must arrange independent Quality Assurance of the Regulatory Impact Statement.

If Quality Assurance is provided by the agency, it must be done by a person or group not directly involved with the policy process for the proposal and nominated by the agency's Chief Executive. This means:

- the Quality Assurance assessor/s should have suitable capability – including a thorough understanding of Cabinet's Impact Analysis Requirements, and sufficient experience and expertise in policy analysis
- internal assessors should be sufficiently senior as to have sign-out authority on behalf of the agency
- a certain level of independence is required.<sup>4</sup>

Many agencies have standing Quality Assurance panels from which individuals may be assigned to take on responsibility for specific cases. Some do not have such capability themselves but may have an arrangement with a larger agency for help in such cases.

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<sup>4</sup> The person providing the Quality Assurance should not be a member of the same team that has prepared the Regulatory Impact Statement. In smaller agencies where this is not possible, the Quality Assurance may need to be outsourced in order to ensure independence (see Table 1 for options).

If your agency does not have such capability, you can contact the Regulatory Quality Team (copied to your Treasury policy team) for assistance with individual cases. However, if your agency is likely to produce more than a handful of Regulatory Impact Statements per year you should consider a more permanent arrangement. The Regulatory Quality Team can help arrange this with you.

### **11.3. Support for Effective Quality Assurance arrangements**

Senior management buy-in and support is essential to the credibility and effectiveness of a robust Quality Assurance process.

A high-level of awareness throughout the agency about Cabinet's Impact Analysis Requirements and the Quality Assurance process is important in ensuring that all Regulatory Impact Statements obtain the required Quality Assurance and are independently assessed to a consistent and robust standard.

Widespread understanding of the role of Quality Assurance assessors and the Quality Assurance process is also needed. The Quality Assurance process should be documented and communicated across the agency.

Having the Impact Analysis framework embedded early as part of the generic policy development process will help lift the quality of analysis more generally and enable the requirements to be met.

### **11.4. What Quality Assurance involves**

There are two aspects to Quality Assurance: assessing and assisting. Formal assessment of the final Regulatory Impact Statement is a mandatory requirement and represents the core role of assessors. This assessment is made using the Quality Assurance criteria <https://treasury.govt.nz/information-and-services/regulation/impact-analysis/quality-assurance-ria>.

Assessors can also provide assistance to the writer, to help lift the quality of the final product. There are choices around the degree to which assessors get involved in the earlier stages of the policy development process, illustrated in the box below.

## Degree of Quality Assurance involvement

Optional	Recommended	Required
<p>Advice on Cabinet's Impact Analysis Requirements and how they should be built into the policy work, including suitable analytical frameworks</p> <p>Explaining what the assessors will be looking for (nature and depth of analysis)</p> <p>Comments on draft terms of reference for major projects</p> <p>Comments on draft reports for major pieces of analysis</p>	<p>Comments on draft discussion documents</p>	<p>Comments on draft Regulatory Impact Statement (at least one iteration)</p> <p>Formal Quality Assurance of Regulatory Impact Statement submitted to Cabinet for in-principle or intermediate policy decisions (including decisions that discard alternative options)</p> <p>Formal Quality Assurance of final Regulatory Impact Statement submitted to Cabinet</p>

### Formal assessment (required)

The core role involves assessing the final Regulatory Impact Statement. Based on our experience, we strongly recommend that you plan for at least one iteration of the Regulatory Impact Statement. This means the Quality Assurance assessors would provide comments on at least one draft of the Regulatory Impact Statement.

Formal assessment is required for Regulatory Impact Statements provided for final policy decisions, as well as those that are to be submitted to Cabinet to support any in principle or intermediate policy decisions.

However, the Quality Assurance for interim Regulatory Impact Statements will need to be tailored to the circumstances, considering 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 Regulatory Impact Statement, so the Quality Assurance will need to reflect these constraints.

Both the Quality Assurance assessors and the people responsible for the preparation of the Regulatory Impact Statement should be clear that the assessors are concerned solely with the quality of the underlying analysis and its presentation in the Regulatory Impact Statement. The role of assessors is not to assess the merits of any policy options considered in the Regulatory Impact Statement — the assessors do not provide a view on whether the proposal is a good idea.

In practice, it can sometimes be hard to draw a firm distinction between the quality of the Regulatory Impact Statement and the quality of the proposal: essentially the assessors need to determine whether Ministers have enough information of sufficient quality, to make an informed decision.

## ***Material required***

As well as the final Regulatory Impact Statement, the Quality Assurance assessors may want to ask for material to test statements made about the Impact Analysis. For example, you may wish to view evidence that has been cited or referenced, assumptions and calculations underlying the cost benefit analysis, or the summary of stakeholder submissions.

The Quality Assurance assessors will need to know what the Cabinet paper is asking ministers to decide, so that they can determine whether there is enough information of sufficient quality to assist ministers to make an informed decision.

## ***Applying the Quality Assurance criteria***

The criteria for assessing the Regulatory Impact Statement are the same regardless of who undertakes Quality Assurance. All four dimensions must be assessed for each element of the Impact Analysis framework. The associated questions, however, are indicative and do not purport to be exhaustive.

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:**

- Is all the necessary information in the Regulatory Impact Statement, as set out in the relevant template?

### **Convincing:**

- Is the analysis accurate, robust and balanced?
- Are the analysis and conclusions supported by the analytical framework, and a commensurate assessment of costs and benefits and supporting evidence?
- Do assumptions make sense?

### **Consulted:**

- Does the Regulatory Impact Statement show evidence of efficient and effective consultation with stakeholders, key affected parties and relevant experts?
- Does it show how any issues raised have been addressed or dealt with?

### **Clear and concise:**

- Is the material communicated in plain English?
- Is the Regulatory Impact Statement of an appropriate length?

An important issue for consideration relates to how far any constraints identified – such as a lack of time for consultation, or gaps in the available data - should be considered a mitigating

factor with respect to the quality of the Impact Analysis. Judgement will be required on a case-by-case basis.

In general, Quality Assurance assessors should consider whether the significance of the constraint is such that it impairs the ability of Cabinet to fully rely on the analysis in the Regulatory Impact Statement for its decision making. For instance, a genuine analytical constraint may exist when there are no existing data for example, 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 Regulatory Impact Statement would note the uncertainty and risks this raises, and the Quality Assurance assessment could be subject to the constraint
- the Quality Assurance assessment might determine that the Regulatory Impact Statement does not meet the “convincing” criterion but note that these deficiencies have been identified.

There is a “line” between these two forms of Quality Assurance statement, and it is a matter of judgement on a case-by-case basis to discern where that 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 Regulatory Impact Statement). In this case, the Quality Assurance assessors 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 Regulatory Impact Statement should also identify the alternative options that they would have analysed, had they been able to consider the full set of feasible options.

## 11.5. Preparing a Quality Assurance statement

The Quality Assurance assessors must provide a formal assessment of the overall quality of the Regulatory Impact Statement for inclusion in the “Impact Analysis” section of the Cabinet or Cabinet Committee paper.

This Quality Assurance statement follows the statement by the responsible agency that the Impact Analysis Requirements apply and, therefore, a Regulatory Impact Statement is required and is attached to the Cabinet paper.

A suggested form for the Quality Assurance statement is:

[Name of team or position of person completing assessment – eg, authoring agency or the Regulatory Quality Team] has reviewed the Regulatory Impact Statement prepared by [name of agency] and associated supporting material, and

[Statement on whether the assessors consider that the information and analysis summarised in the Regulatory Impact Statement **meets** or **does not meet** or **partially meets** the Quality Assurance criteria.]

[Explanation of the above assessment and comments on any issues that have been identified in relation to any of the dimensions of Quality Assurance criteria. For example, where the assessment is that the Regulatory Impact Statement “does not meet” or “partially meets” the Quality Assurance criteria, state:

- the areas that do not meet and the impacts of these areas on the robustness of the advice as a support to Ministers’ decision making; or
- comment on how the policy proposal should be moved forward or put on more solid foundations (eg, further analysis of a particular issue, consultation with certain stakeholders, or careful monitoring and preparedness to take further action if necessary).]

The purpose of the Quality Assurance statement is to provide decision-makers with advice on the quality of the information in the Regulatory Impact Statement and the reliance they should place on the underlying Impact Analysis. It is not a comment on the efforts of the author or their agency.

In practice, judgement is required in deciding which category a Regulatory Impact Statement falls into (particularly when choosing between “meets” and “partially meets”; and between “partially meets” and “does not meet”). The Quality Assurance assessors need 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 or disclosed that may compromise the quality of the Impact Analysis.

In general, we recommend that “does not meet” is used when the Regulatory Impact Statement 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 Regulatory Impact Statement meets the quality standards on most dimensions, but there is one area of deficiency that should be highlighted.

There is no set format for the explanation of the assessment or comments on Quality Assurance issues, as these will depend on the particular circumstances of the individual Regulatory Impact Statement. However, the Quality Assurance statement should:

- be succinct
- provide an indication as to the reliance that can be placed on the Regulatory Impact Statement, as a basis for informed decision-making
- link the issues raised to the relevant Quality Assurance criterion
- explain any gaps between the Impact Analysis in the Regulatory Impact Statement and what the Quality Assurance assessors 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).

Where a Regulatory Impact Statement is assessed as “partially meets” or “does not meet” the Quality Assurance criteria, agencies should have an internal process. This may include briefing senior management and Ministers’ offices.

The assessment by the Quality Assurance assessors should be considered independent and final. There may be instances when the policy team responsible for preparing the Regulatory Impact Statement is not satisfied with the final assessment and/or the wording of the Quality Assurance statement. In anticipation of such scenarios, agencies may wish to consider the process by which these situations will be managed. For example, identifying the responsible senior management and how they will provide support to the Quality Assurance assessors to maintain their independence.

## 11.6. Other Quality Assurance assistance

Assistance can be useful for other elements of the process, beyond those covered by formal Quality Assurance.

### *Discussion documents*

For guidance on quality assurance of discussion documents, please refer to the practice note on discussion documents on the Treasury impact analysis page <https://treasury.govt.nz/information-and-services/regulation/impact-analysis-requirements-regulatory-proposals>

### *Other assistance (optional)*

As a Quality Assurance assessor you could choose to be involved earlier in the policy process to assist in lifting the quality of the analysis, the final Regulatory Impact Statement, and ultimately the regulatory proposal itself.

This assistance role can involve engaging at key points in the process. You might provide advice at the outset of the policy development process on:

- Cabinet's Impact Analysis Requirements and how they could be built into the policy work, including suitable analytical frameworks and tools
- what Quality Assurance assessors will be looking for in terms of the nature and depth of Impact Analysis and the extent of evidence on the problem, impacts and risks.

You might also comment on draft reports on major pieces of analysis, or 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.

The purpose of commenting on draft material is to help enable the final Regulatory Impact Statement to fulfil Cabinet's Impact Analysis Requirements. The comments by Quality Assurance assessors 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 Regulatory Impact Statement. 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
- the nature and quality of the consultation process.

It is usually helpful if early comments (eg, on draft Regulatory Impact Statements) are as comprehensive as possible, to avoid raising substantive issues late in the process. When reviewing draft Regulatory Impact Statements, it can be useful for Quality Assurance assessors 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.

The Quality Assurance assessors should, however, take care to preserve the independence of their final Quality Assurance assessment by focusing on the nature and quality of the Impact Analysis rather than the features of the proposal.

### ***Non-standard situations***

Policy processes are often non-linear, and a wide variety of non-standard situations can arise. Quality Assurance assessors may come under pressure to provide Quality Assurance statements in a very short timeframe, on non-final Regulatory Impact Statements, or on Regulatory Impact Statements that change rapidly (eg, as policy options are altered by Ministers). Sometimes regulatory proposals will “bypass” Cabinet’s Impact Analysis Requirements altogether by not having a Regulatory Impact Statement or by not being submitted to the appropriate Quality Assurance process (see Section 13 *Regulatory proposals with inadequate Impact Analysis*).

This guidance chapter does not attempt to cover all possible circumstances, and agencies will need to exercise judgement in many cases. The Regulatory Quality Team is available to provide advice on a case-by-case basis, and to share their experiences in dealing with similar situations.

Agency assessors may choose to review significant Regulatory Impact Statements prior to assessment by the Regulatory Quality Team. There are some benefits with this approach: it can identify and address issues with the Regulatory Impact Statement before it is provided to the Regulatory Quality Team, and it may assist in agency capability building. However, it could also increase the time taken to obtain Quality Assurance. This additional Quality Assurance is therefore optional.

The Policy Project provides guidance and tools that are relevant in a wide range of policy situations. For more information, see the Policy Project webpage ([www.dpmc.govt.nz/policyproject](http://www.dpmc.govt.nz/policyproject)) or contact [policy.project@dpmc.govt.nz](mailto:policy.project@dpmc.govt.nz).

## 11.7. Moderation and review

The Quality Assurance criteria must be applied consistently across proposals and over time. Moderation arrangements could include:

- having centralised oversight of all Quality Assurance assessments (eg, the chair of your agency's Quality Assurance panel)
- ensuring all Quality Assurance is subject to peer review by others within your Quality Assurance panel or pool of assessors
- rotating Quality Assurance responsibilities for types of proposals (ie, particular policy areas) so that they are not always reviewed by the same person.

Periodic evaluations of Quality Assurance 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 Quality Assurance assessments. To assist this process, agencies should maintain a register of Regulatory Impact Statements assessed and the outcomes of these assessments. Where a Quality Assurance panel has been established, this could be undertaken by the secretariat or a nominated panel member.

Keeping track of regulatory proposals in this way may also be useful in providing material for agencies' reporting requirements. In addition, the Treasury may request information for their report backs to Cabinet on the operation of the regulatory management system and how the Government is meeting its regulatory management commitments and any other reporting Treasury may undertake.

## 12. Preparing the Cabinet paper

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

All Cabinet papers must include a section entitled “Impact Analysis” to link the two documents.

If an exemption has been granted, this section must include a statement from the Treasury confirming that the proposal, or aspects of it, is exempt from the requirement to provide a Regulatory Impact Statement. If relevant, this statements will include any conditions of that exemption (see Section 7 *Exemptions from providing a Regulatory Impact Statement*).

If an exemption is not applicable (or was not granted), this section must contain two parts:

- a statement by the responsible agency that Cabinet’s Impact Analysis Requirements apply, a Regulatory Impact Statement is required, and the assessment is attached to the Cabinet paper
- a statement from the Quality Assurance assessors providing an independent assessment of the overall quality of the Regulatory Impact Statement (see Section 11.5 Preparing a Quality Assurance statement).

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

# 13. Regulatory proposals with inadequate Impact Analysis

Impact Analysis may be considered inadequate where:

- there is no accompanying Regulatory Impact Statement for the government regulatory proposal in the Cabinet paper and the Treasury has not granted the proposal an exemption from Cabinet's Impact Analysis Requirements
- the accompanying Regulatory Impact Statement in the Cabinet paper has not been independently quality assured or has been assessed as "does not meet" against the Quality Assurance criteria.

In such cases, a Supplementary Analysis Report will be required or where a proposal is being implemented urgently, a Post-Implementation Assessment or Review may be an alternative option. These options are outlined in sections 13.3 *Supplementary Analysis Reports* and 13.4 *Post-Implementation Assessment or Review as a further option for inadequate or missing impact analysis*.

## 13.1. Early warning

Ministers have expressed a strong preference for early warning about proposals with inadequate Impact Analysis.

Early warning is the primary responsibility of the agency responsible for preparing the Regulatory Impact Statement and needs to be given sufficient priority by agency officials. Further, for any significant Regulatory Impact Statement that has not met, or in the view of Quality Assurance assessors is unlikely to meet, Cabinet's Impact Analysis Requirements, Treasury may advise the Minister of Finance and any other Minister with responsibilities for the oversight and operation of the Impact Analysis Requirements.

In many cases where Quality Assurance assessors conclude that a Regulatory Impact Statement does not meet the Quality Assurance criteria, you may be able to revise your Regulatory Impact Statement to address the identified deficiencies and have it reassessed before it is lodged. This may, for instance, require the Cabinet submission to be delayed and is therefore something that you will need to discuss and agree with your agency leadership and Minister as relevant.

Sometimes it is not possible to improve the Regulatory Impact Statement to the extent that it "partially meets", so the proposal is lodged with Cabinet Office accompanied by a Regulatory Impact Statement that "does not meet" the criteria. There may also be a small number of Cabinet papers that involve regulatory options but are not accompanied by a Regulatory Impact Statement and have not been exempt from the requirements.

## 13.2. Cabinet Committee Chair discretion

The relevant Cabinet Committee Chair has discretion on whether Cabinet papers containing with inadequate Impact Analysis are considered by the committee.

## 13.3. Supplementary Analysis Reports

In the event that a Cabinet paper with inadequate Impact Analysis does proceed and substantive decisions are made, a “Supplementary Analysis Report” is generally required. (See section 13.4 *Post-Implementation Assessment or Review as a further option for inadequate or missing impact analysis*).

To help ensure that the Supplementary Analysis Report fulfils a useful purpose, the nature and timing is to be agreed by, or on behalf of, the responsible Minister, and the Minister responsible for the oversight and operation of the Impact Analysis Requirements.

The Regulatory Quality Team will discuss the nature, timing and scope of the Supplementary Analysis Report with you. This will be informed by factors such as the nature and significance of the proposal, the gaps in the impact analysis, and the further ministerial decision-making opportunities that a Supplementary Analysis Report could usefully inform.

In most cases, the Supplementary Analysis Report would provide Ministers with a final reassurance, or otherwise, of the policy they have approved. The report would be a form of regulatory “pre-mortem”, which systematically analyses the risks associated with the proposal and how these have been, or will be, mitigated. It would provide an additional check point at which the evidence base and free and frank advice can inform Ministers. Such analysis is good practice in any event as it informs implementation planning.

The Supplementary Analysis Report may also include matters such as:

- supplementary analysis on specified issues (for instance, on costings, compliance levels, implementation plans) to inform implementation decisions
- the findings of consultation on an exposure draft of the regulatory measure
- a commitment to report the findings of a post-implementation review
- a commitment that the original Cabinet paper be published – this would aid transparency by showing the information that Ministers did have available to them.

To assist transparency, the Supplementary Analysis Report is required to reference the particular purpose for which it is required, including the stage at which it is provided to Cabinet. It is a separate standalone document and is required to be published along with the original Regulatory Impact Statement, if any.

Supplementary Analysis Reports are subject to Quality Assurance requirements in the same way as are Regulatory Impact Statements. Each Supplementary Analysis Report is assessed against its fitness for purpose to the task it was set, including its adequacy to support any decisions it may be designed to inform.

The Supplementary Analysis Report requirement covers the situation previously addressed by the requirement for post-implementation review, as agreed by Cabinet in 2009.

### **13.4. Post-Implementation Assessment or Review as a further option for inadequate or missing Impact Analysis**

Where the Regulatory Quality Team is satisfied that a Supplementary Analysis Report might not be feasible or useful before Cabinet's regulatory decisions are confirmed or implemented, the Regulatory Quality Team may instead require a Post-Implementation Assessment or Review<sup>5</sup>.

This alternative will likely be most appropriate where departments are unable to provide appropriate impact analysis in the timeframes required, but an exemption is not available.

If not already agreed by Cabinet, the nature and timing of the Post-Implementation Assessment or Review (including whether, or what type of, quality assurance is expected) will be agreed by or on behalf of joint Ministers as for a Supplementary Analysis Report. These decisions will be informed by discussion between you and the Regulatory Quality Team.

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<sup>5</sup> A Post-Implementation Assessment/Review could range from a full review of the performance of a regulatory change after a certain period, including whether it remains appropriate, to a more targeted or earlier assessment of the implementation of a regulatory change to check if any adjustments are desirable.

# 14. Publishing the Regulatory Impact Statement

To foster openness and transparency around the regulatory decision-making process, the full text of all Regulatory Impact Statements and Supplementary Analysis Reports (if any) must be published on the websites of both the administering Agency and Treasury.

Any publication requirements for Post-Implementation Assessments or Reviews will be determined on a case-by-case.

## 14.1. Withholding sensitive or confidential information

Deletions can be made from published versions of Regulatory Impact Statements and Supplementary Analysis Reports, consistent with the provisions of the Official Information Act 1982 <http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html?src=qs>

## 14.2. Timing of publication

Publication is required when:

- any resulting Bill is introduced into the House or Supplementary Order Paper is released
- any resulting regulation is gazetted
- the government announces its decision not to regulate
- when Ministers approve the publication of a RIA under Cabinet's proactive release requirements for Cabinet papers<sup>6</sup>.

Regulatory Impact Statements and Supplementary Analysis Reports (if any) 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 Regulatory Impact Statement was required.

## 14.3. Process for publication

When the Regulatory Impact Statement and Supplementary Analysis Report (if any) is due for publication (according to the requirements set out above), agencies must send the completed publication form on Treasury's Regulation webpage <https://treasury.govt.nz/impact-analysis-requirements-regulatory-proposals> and Word versions of these documents to the Regulatory Quality Team at [RIA.Team@treasury.govt.nz](mailto:RIA.Team@treasury.govt.nz)

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<sup>6</sup> <https://dpmc.govt.nz/publications/co-18-4-proactive-release-cabinet-material-updated-requirements>

Web publication must comply with the New Zealand Government Web Standards and Recommendations, which are available at <https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards?rf=1>

Agencies must keep the Regulatory Quality Team informed (via [RIA.Team@treasury.govt.nz](mailto:RIA.Team@treasury.govt.nz)) about the timing of introduction/gazettal so that Treasury can publish the Regulatory Impact Statement and Supplementary Analysis Report (if any) as soon as possible after the Bill or regulations become publicly available.

Forty printed copies of the Regulatory Impact Statement, and Supplementary Analysis Report (if any) for Bills must also be provided to the Bills Office. See <http://www.pco.parliament.govt.nz/ris-guidance/>. Select committee clerks will include relevant Regulatory Impact Statements and Supplementary Analysis Reports (if any) in the material provided to Select Committees on Bills referred to that Committee.

The URLs to the location of the Regulatory Impact Statement and Supplementary Analysis Report (if any) must also be included in the Explanatory Note to any Bill, Supplementary Order Paper (SOP), or regulations for which a Regulatory Impact Statement and Supplementary Analysis Report (if any) was prepared.

The Parliamentary Counsel Office (PCO) <http://www.pco.govt.nz/> will provide standard wording for text to accompany the URLs. This wording may need to be adapted for different circumstances (eg, when multiple Regulatory Impact Statements were prepared for a series of policy decisions). 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), “when Ministers approve the publication of a RIA under Cabinet’s proactive release requirements for Cabinet papers”.

#### **14.4. Disclosure statements for proposed legislation**

Agencies must 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 Regulatory Impact Statement. Like the Regulatory Impact Statement, it is an agency 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 to be disclosed 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: <https://treasury.govt.nz/publications/guide/disclosure-statements-government-legislation-technical-guide-departments-html>

## 15. Improving the quality of Regulatory Impact Statements over time

Learn from previous Quality Assurance processes and build these lessons into future policy processes and projects. Many agencies have policy quality assessment processes that provide for this cycle of learning and ongoing improvement, and these processes are likely to cover both regulatory and other policy.

In addition, the Policy Project publishes a range of guidance and tools on how best to learn from previous policy quality assurance processes, including ex-post quality assessment, peer review and quality assurance panels. Also, *Start Right* – the Policy Project’s approach for embedding quality from the outset of policy initiatives – includes mechanisms for incorporating lessons from previous policy processes into new initiatives.

For more information, see the Policy Project webpage ([www.dpmc.govt.nz/policyproject](http://www.dpmc.govt.nz/policyproject)) or contact [policy.project@dpmc.govt.nz](mailto:policy.project@dpmc.govt.nz).