



Intended for All Ministers
All Chief Executives
All Senior Private Secretaries
Chief Parliamentary Counsel
Speaker of the House of Representatives

Impact Analysis Requirements

Key points

- 1 This circular sets out the requirements for Ministers and agencies developing government regulatory proposals. Government agencies and Ministers should not see regulation as the first resort for problem solving. Where regulation is proposed, it should address a well-defined problem and should be carefully analysed to ensure the benefits exceed the costs.
- 2 Key points in the circular are:
 - 2.1 impact analysis encourages a systematic and evidence-informed approach to policy development;
 - 2.2 government agencies are to contact the Ministry for Regulation as soon as possible after policy work commences on an issue that may result in a regulatory proposal being recommended to Cabinet;
 - 2.3 all policy papers taken to Cabinet that include a regulatory proposal are to be accompanied by agency impact analysis in the form of a Regulatory Impact Statement, unless an exemption applies;
 - 2.4 there are some limited automatic exemptions. The Ministry for Regulation can also grant exemptions in certain circumstances, but this may be subject to conditions;
 - 2.5 all Regulatory Impact Statements must be independently quality assured against set criteria, and a quality assurance statement included in the relevant Cabinet paper;
 - 2.6 external consultation is a key component of high-quality impact analysis and certain requirements also apply to discussion documents that contain regulatory options; and
 - 2.7 government regulatory proposals with missing or inadequate Regulatory Impact Statements are likely to be subject to a Supplementary Analysis or Post Implementation Review requirement.

- 3 The updated Impact Analysis Requirements set out in this circular apply from 1 January 2025.¹ The Regulatory Impact Statement templates, Quality Assurance criteria, guidance notes, and access to the online platform for administering the impact analysis requirements (RIA Online) are all available on the Ministry for Regulation website.
- 4 Ministers and Chief Executives should ensure that:
- 4.1 all staff involved in the development of government regulatory proposals are familiar with the contents of this circular; and
 - 4.2 the material in this circular is conveyed to all Crown entities and State sector agencies that may be involved in policy initiatives relating to government regulatory proposals.

Purpose and role of Impact Analysis

- 5 Impact analysis supports and informs the Government's decisions on proposals for policy change. It is both a process and an analytical framework that encourages a systematic and evidence-informed approach to policy development.
- 6 The provision of impact analysis is intended to support policy effectiveness and resilience by helping policy advisers and decision-makers avoid some of the potential pitfalls that arise from natural human decision-making biases and mental short-cuts. It does this by seeking to ensure that:
- 6.1 the nature and significance of the underlying problem or opportunity is properly identified, and is supported by available evidence;
 - 6.2 the full range of practical options, including non-regulatory options, to address the problem or opportunity, have been considered;
 - 6.3 all material economic, social, and environmental impacts of proposed actions have been identified and assessed in a consistent way (including different or disproportionate impacts for particular groups or organisation types);
 - 6.4 relevant international standards are identified, if any, and reasons for any divergences are considered;
 - 6.5 key risks (including implementation risks) have been identified and options for their mitigation have been considered;
 - 6.6 limitations and assumptions underpinning the analysis are explicitly identified, and the best reasonably available scientific, technical, and other information of relevance has been used;
 - 6.7 practical implementation, funding, and capability issues have informed the design of the proposed policy response;
 - 6.8 interested and affected parties have been given a reasonable opportunity to provide input and have their views considered; and

¹ While the circular comes into force on 1 January 2025, any proposal which has had its arrangements confirmed with the Ministry for Regulation prior to 1 January 2025 can continue under the old requirements and templates if the proposal is submitted to Cabinet by 31 March 2025.

6.9 if a recommendation is made, it is clear why a particular option has been recommended over others.

- 7 These Impact Analysis Requirements reflect and support the Government Expectations for Good Regulatory Practice. Government agencies need to keep in mind the expectations for the design of regulatory systems (Part A of the Government Expectations).² They are also expected to adopt a whole-of-system view, and take a proactive, collaborative approach to the care of the regulatory system(s) within which they work (Part B of the Government Expectations). The provision of impact analysis is intended to provide particular support for the expectations in Part B concerned with providing robust analysis and advice to Ministers before decisions are taken on regulatory change.
- 8 Government agencies should not see regulation as the first resort for problem solving. There should be a particularly strong case to be made for any regulatory proposal that is likely to impair private property rights, market competition, or the incentives on businesses to innovate and invest.
- 9 The Government encourages agencies to regularly review and maintain their regulatory systems and proactively identify where regulations are out of date, no longer needed, or the costs of regulation exceed the benefits. The Ministry for Regulation will consider whether proposals to repeal legislation could be exempted or, if not, whether streamlined impact analysis would be appropriate.
- 10 Impact analysis also contributes to the transparency and accountability of government through the routine publication of the resulting Regulatory Impact Statements (RISs), Supplementary Analysis Reports, or similar documents.

Impact analysis is mandatory for some government regulatory proposals

- 11 Unless an exemption applies, all policy proposals taken to Cabinet (or to a group of Ministers with delegated authority) for approval that include a government regulatory proposal **must** be accompanied by impact analysis set out in a RIS.³ In addition to supporting good policy decision-making, this will also ensure that New Zealand delivers on its commitments in international agreements to endeavour to carry out impact assessments of proposed major regulatory measures relating to any matter covered by those agreements.
- 12 A RIS is a government agency document in which the agency provides a summary of its best impact analysis and advice relating to a government regulatory proposal. This impact analysis should be completed and summarised before the Cabinet paper is drafted.
- 13 At the latest, a draft RIS must be available to accompany ministerial consultation on Cabinet papers. Agencies should also strive to make the draft RIS available when consultation with other agencies occurs, to inform agency feedback on a proposal. The finalised RIS must later be provided when papers are submitted to Cabinet committees (or a similar Ministerial group) for policy consideration.

² Available at: <https://www.regulation.govt.nz/our-work/regulatory-stewardship>

³ The grounds and process for granting exemptions are covered in paragraphs 29 to 41.

- 14 A “government regulatory proposal” means a proposal that will ultimately require creating, amending, or repealing primary or secondary legislation.⁴ This includes proposals that involve:
- 14.1 decisions to introduce legislative changes that are merely enabling (i.e. 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;
 - 14.2 decisions to create, or amend a statutory authority to charge third parties to cover the costs of a government activity (i.e. cost recovery proposals);
 - 14.3 “in principle” policy decisions and intermediate policy decisions, particularly those where regulatory options are narrowed down (e.g. limiting options for further work/consideration);
 - 14.4 decisions to release discussion documents that explicitly or implicitly narrow down the range of options, including regulatory options, being considered by the Government;
 - 14.5 seeking negotiating mandates for, or concluding, or seeking approval to sign or be bound by, treaties with regulatory impacts;
 - 14.6 secondary legislation made by a Minister under an enabling power in an Act where the Minister’s decision is referred to Cabinet for noting;
 - 14.7 decisions about a regulatory proposal that has previously been announced, for example by a Minister, a political party manifesto, a confidence and supply agreement, or a coalition agreement;
 - 14.8 decisions to adopt a member’s bill as a government bill or take further decisions in relation to the content of that bill.
- 15 In some of the situations outlined above, the best way to meet the impact analysis requirements may vary from the standard impact analysis expectations and templates outlined in Ministry for Regulation guidance. Agencies should talk to the Ministry if they think this might be the case for their regulatory proposal.
- 16 During the Parliamentary process, it often becomes necessary to amend a Bill. The policy content of the amendments may be such that further approvals from Cabinet are needed for new policy or to alter existing policy approvals. If so, the original RIS should be updated or supplemented to indicate how the changes affect the agency’s impact analysis (e.g. how they alter the nature and/or magnitude of the impacts).

⁴ “Secondary legislation” means an instrument (whatever it is called) that is made under an Act if the Act (or any other legislation) states that the instrument is secondary legislation – see the Legislation Act 2019.

Early engagement requirements to support high quality regulation

- 17 Inadequate impact analysis often arises from incomplete problem definition, unclear objectives, and a failure to consider all feasible options. These are foundations for analysis of regulatory proposals, and getting them right at the outset can avoid poor quality regulation and subsequent revisions. Inadequacies in these areas cannot be easily fixed at a later stage, so early engagement with interested parties and experts to test initial thinking can help to avoid these problems, leading to more robust analysis.
- 18 Agencies are to contact the Ministry for Regulation as soon as possible after policy work commences on an issue that may result in a regulatory proposal being recommended to Cabinet. The appropriate point may be when preparing a first briefing for a Minister.
- 19 The Ministry for Regulation will review information about problem definition and rationale for government intervention before deciding to engage. The Ministry will consider the significance of the policy issue, the degree to which the use or exchange of property rights may be affected, and the anticipated policy development process.
- 20 Feedback may include identifying connections to other initiatives, testing whether there is scope to address related issues, requesting to be consulted later in the policy process, or recommending contact with other agencies or subject matter experts. Agencies should also seek feedback from their own impact analysis experts and relevant policy specialists.⁵
- 21 Agencies are requested to initiate early engagement with the Ministry for Regulation via the channels specified in the Early Engagement section of the Ministry's website.

External consultation to support high quality impact analysis

- 22 Consultation with external stakeholders and the public is a key element of a good impact analysis process. External consultation recognises that those impacted by, or with subject matter expertise or interest in, proposed regulation may have additional or better information than government officials and Ministers about the real-world nature of the problems, additional options, or the likely impacts of proposals. Meaningful consultation also increases public willingness to accept the final regulatory decision, even if it differs from their preferred option.
- 23 In some cases, external consultation is not only desirable but required. Along with any statutory requirements for consultation, government agencies need to be aware that legally binding consultation obligations in a number of New Zealand's international trade agreements are likely to apply to a wide range of regulatory proposals.⁶ Depending on the agreement concerned, those obligations may only allow for limited exceptions and may include additional expected standards regarding timeframes and publication.

⁵ For example, if a policy problem or proposal impacts incentives or the ability to compete in markets, limits choice or ability to switch between options, or is not competitively neutral between businesses or business models, the Commerce Commission's Competition Assessment Guidelines should be referenced and MBIE should be consulted. The Competition Assessment Guidelines can be found on the Commerce Commission website here: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/competition-assessment-guidelines>

⁶ For example, the World Trade Organisation Agreement on Technical Barriers to Trade, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, and the NZ-EU Free Trade Agreement.

- 24 Whether a regulatory proposal is subject to such a consultation obligation should be identified as early as possible. Some general guidance is available from the Ministry for Regulation, but the Ministry of Foreign Affairs and Trade Legal Division can provide a more authoritative view if required. A RIS can be a convenient way to provide appropriate assurance on how an external consultation obligation has or will be met.

Impact analysis process requirements are administered through the RIA Online platform

- 25 The Ministry for Regulation administers the impact analysis requirements for government regulatory proposals. When it is clear that a government regulatory proposal will be developed for consideration by Cabinet, the responsible agency should seek confirmation from the Ministry for Regulation as to how the impact analysis process requirements apply (including exemption applications, process confirmations, and publication of RISs). Confirmation should be sought through RIA Online, which is accessible through the Ministry for Regulation website.⁷

Ensuring discussion documents support future impact analysis

- 26 Discussion documents can be an effective means of undertaking external consultation. They are intended to prompt feedback that will inform future policy decisions and supporting impact analysis. Cabinet's impact analysis requirements apply where Cabinet is approving the release of a discussion document, which contains regulatory options. The Ministry for Regulation will confirm the relevant process and provide wording for the Cabinet paper.
- 27 In most cases, where there are a range of feasible regulatory options under consideration, a full RIS is not required. However, to support useful feedback, these discussion documents must be quality assured to ensure they contain sufficient analysis to meet the quality assurance criteria.⁸ The responsible agency should arrange for quality assurance of the discussion document to be undertaken by a group or person within the agency that has not been involved in preparing the document. A statement from the quality assurance panel should be included in the 'impact analysis' section of the relevant Cabinet paper.
- 28 However, where the discussion document narrows the range of regulatory options being considered, it will generally be necessary to prepare an interim RIS analysing the decision to narrow options.⁹

Exemptions from the requirement for a Regulatory Impact Statement

- 29 The production and presentation of a RIS is not required for certain types of government regulatory proposals. Agencies can claim the "technical or case-specific" exemptions specified in paragraph 30, but the Ministry for Regulation determines whether all other types of exemptions can be claimed.

⁷ For regulatory proposals which are likely to be particularly sensitive, please discuss information security relating to the proposal with the Ministry for Regulation.

⁸ The criteria for discussion documents are set out in guidance available on the Ministry for Regulation website.

⁹ In marginal cases, the need for a RIS can be avoided if the responsible Minister and agency include in the Cabinet paper and the discussion document an explicit statement indicating that the discussion document is not intended to narrow the range of options the government is considering.

Technical or case-specific exemptions

- 30 A RIS is not required where a government regulatory proposal:
- 30.1 is for a matter to be included in a Revision Bill (as provided for in the Legislation Act 2019);
 - 30.2 is for a matter to be included in a Statutes Amendment Bill (as provided for in Standing Orders);
 - 30.3 is for the repeal or removal of already redundant legislative provisions;
 - 30.4 provides solely for the commencement of existing legislation or legislative provisions (e.g. an Order in Council to bring legislation into force);
 - 30.5 is solely a request to authorise spending in an Appropriation Bill or an Imprest Supply Bill;
 - 30.6 is solely a request for confirmation of secondary legislation that has already been made (e.g. through a Secondary Legislation Confirmation Bill);
 - 30.7 is solely for the annual setting of income tax rates (as required under the Income Tax Act 2007) where the rates remain unchanged;
 - 30.8 is to implement deeds of settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements; or
 - 30.9 is to bring into effect recognition agreements under the Marine and Coastal Area (Takutai Moana) Act 2011.
- 31 If any agency intends to use one of the exemptions above for its regulatory proposal it should note in the Cabinet paper that it has claimed an exemption under the circular and provide the relevant exemption ground.
- 32 Any agency that is unsure whether its regulatory proposal qualifies for an exemption in paragraph 30 above (e.g. whether a deed of settlement would affect existing regulatory arrangements) can contact the Ministry for Regulation.

Exemptions available for a declared emergency

- 33 A RIS is not required if the Ministry for Regulation is satisfied that a government regulatory proposal is:
- 33.1 to make, amend, or to modify or suspend the effect of primary or secondary legislation, under statutory powers only able to be exercised during a declared emergency or emergency transition period;¹⁰

¹⁰ Such as, for example, Immediate Modification Orders made in accordance with sections 14 or 15 of the Epidemic Preparedness Act 2006.

- 33.2 to do one or more of the following in situations where a declared emergency has made compliance with existing legislative requirements impossible, impractical, or unreasonably burdensome:
 - 33.2.1 temporarily defer or extend legislative deadlines;
 - 33.2.2 provide limited temporary exemptions or modifications to existing legislative requirements; or
 - 33.2.3 temporarily enable alternative methods of legislative compliance;
- 33.3 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.
- 34 In addition, a RIS may not be required where the Ministry for Regulation is satisfied that a government regulatory proposal, not covered by other existing RIS exemptions:
 - 34.1 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
 - 34.2 is required urgently to be effective (making a complete, robust, and timely RIS unfeasible); and
 - 34.3 the need for the proposal was not reasonably foreseeable.
- 35 An exemption granted under paragraphs 33 or 34 may be subject to conditions, such as:
 - 35.1 the inclusion, provision, and/or publication of some specific information, or elements of impact analysis in an alternative form;
 - 35.2 a Supplementary Analysis Report or a Post-Implementation Review (see paragraphs 56 to 59); or
 - 35.3 a suitable sunset provision for the regulatory proposal.

Minor or limited impacts exemption

- 36 A RIS is not required if the Ministry for Regulation is satisfied that a government regulatory proposal either has:
 - 36.1 no or only minor economic, social, or environmental impacts;¹¹ or
 - 36.2 the economic, social, or environmental impacts are limited (e.g. in scope and type) and are easy to assess.

¹¹ The Ministry for Regulation’s guidance contains more information about what could qualify for a minor impacts exemption. An exemption is more likely to be appropriate where the proposal has localised impacts or only affects a small group of people, it clarifies an area of current law or codifies existing practice, or if the impacts can be monetised and they are likely to be low over the medium term. An exemption is also likely to apply to changes to the internal administrative or governance arrangements of the New Zealand government. A minor or limited impacts exemption is less likely to be appropriate when the proposal restricts the use or exchange of private property.

Discretionary exemptions

- 37 A RIS may not be required, in full or in part, where the Ministry for Regulation is satisfied that a government regulatory proposal fits within the following situations:
- 37.1 the relevant issues have already been adequately addressed by existing impact analysis; or
 - 37.2 a RIS would substantively duplicate other government policy development, reporting, and publication requirements or commitments; or
 - 37.3 the government has limited decision-making discretion or responsibility for the relevant content of the proposed legislative action;¹²
- and
- 37.4 full impact analysis is not the best and most cost-effective way to ensure that Ministers have access to relevant information to inform their decisions.
- 38 An exemption granted under paragraph 37 may be subject to conditions, such as the inclusion, provision and/or publication of some specific information, or elements of impact analysis in an alternative form.

Seeking an exemption

- 39 Whether an “emergency”, “minor or limited impacts”, or “discretionary” exemption applies is determined by the Ministry for Regulation, based on the information an agency provides about each proposal or aspects of a proposal and the nature and range of decisions being sought in the Cabinet paper. If this information changes, agencies should seek reconfirmation of the exemption decision.
- 40 The Ministry will take into account whether the proposal restricts the use or exchange of private property, and will be less likely to grant an exemption where there is such a restriction. The Ministry will be more likely to grant an exemption where there are no such restrictions on the use or exchange of private property, or such restrictions are being reduced.
- 41 Where an exemption applies, the Ministry for Regulation will provide the agency with a statement for inclusion in the relevant Cabinet paper (see paragraph 51 below).

Scope and form of Regulatory Impact Statements

- 42 The RIS templates tailor the form and scope of the RIS to the nature and significance of the regulatory proposal. These templates are available on the Ministry for Regulation website.
- 43 A RIS must be signed off by a staff member at manager level (or above) for the responsible agency, and must disclose information to highlight any key gaps, assumptions, dependencies and significant constraints, caveats, or uncertainties regarding the impact analysis.
- 44 Unless agreed otherwise, impact analysis must be presented using the standard RIS template provided by the Ministry for Regulation. The Ministry for Regulation may, on a case-by-

¹² Such as, for example, making the minimum necessary legislative changes required to comply with international obligations that, due to previous treaty actions, are automatically binding on New Zealand.

case basis, agree that the agency can depart from the standard template. This may include some of the types of regulatory proposal listed in paragraph 14.

Quality Assurance arrangements

- 45 All RISs must be independently quality assured against the criteria set out on the Ministry for Regulation website. The Quality Assurance criteria are the same regardless of who carries out the Quality Assurance.
- 46 Quality Assurance arrangements are determined by the Ministry for Regulation following consideration of information provided by the agency about its processes and the particular regulatory proposal.
- 47 In most cases, Quality Assurance will be undertaken by the responsible agency or an inter-agency panel. The Ministry for Regulation itself may undertake quality assurance, but this is typically only for very significant and complex proposals. 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 or preparing the RIS.
- 48 A decision that the agency is responsible for arranging Quality Assurance is not necessarily final. The conditions on which the decision is made are set out and agreed with the agency. If any of the conditions change (e.g. timeframes become compressed or the policy initiative is re-scoped) then the agency must advise the Ministry for Regulation and the decision will be reviewed.
- 49 A statement by the Quality Assurance assessors on the overall quality of the RIS must be provided in the Cabinet paper (see paragraph 52.2 below). The quality assured RIS should be lodged with the Minister's Cabinet paper.

“Impact Analysis” section in Cabinet papers

- 50 Cabinet and Cabinet committee papers that contain government regulatory proposals must contain a section entitled “Impact Analysis”.
- 51 If an exemption applies, this section must contain a statement, in most cases provided by the Ministry for Regulation, confirming that the proposal, or aspects of it, is exempt from the requirement to provide a RIS. If relevant, the section must also specify any conditions of the exemption.
- 52 If an exemption does not apply, this section must contain two parts, as follows:
 - 52.1 a statement that the Impact Analysis Requirements apply and, therefore, a RIS is required and is attached to the Cabinet paper; and
 - 52.2 a statement by the Quality Assurance assessors providing an independent assessment of the overall quality of the RIS.
- 53 Where a discussion document is being quality assured, this section should include a statement from the Quality Assurance assessors on the discussion document.

Government regulatory proposals with inadequate impact analysis

- 54 A government regulatory proposal has inadequate impact analysis if:
- 54.1 there is no accompanying RIS and the proposal has not been exempted from the Impact Analysis Requirements; or
 - 54.2 the accompanying RIS has not been independently quality assured, or has been assessed as a “does not meet” against the Quality Assurance criteria.
- 55 The Ministry for Regulation may advise the Minister for Regulation, and any other Minister with responsibilities for the oversight and operation of the Impact Analysis Requirements, of any government regulatory proposal with inadequate impact analysis. The Ministry will record instances of papers with inadequate impact analysis and will publicly report on how well each portfolio is meeting its impact analysis responsibilities.

Supplementary Analysis Report

- 56 If a government regulatory proposal with inadequate impact analysis proceeds to discussion at a Cabinet committee, and substantive decisions are made, the responsible Minister must provide Cabinet with a Supplementary Analysis Report, to be prepared by or on behalf of the relevant government agency.
- 57 Unless the requirement is waived by the Ministry for Regulation, the nature and timing of this Supplementary Analysis Report must be agreed between the relevant government agency and the Ministry. The report must be Quality Assured and published.
- 58 The primary purpose of a Supplementary Analysis Report is to analyse at least some matters relating to the future performance of a regulatory proposal in time to inform further possible decisions on its design or operational details. In general, the sooner that this analysis is available the more useful it is likely to be. Consequently, wherever possible, a Supplementary Analysis Report should be provided before Cabinet’s regulatory decisions are confirmed or draft legislation is finalised.

Post-Implementation Review

- 59 In situations where it is not possible to prepare a Supplementary Analysis Report before legislation is introduced to the House or regulations are made, a post-implementation review should be undertaken (unless the requirement is waived by the Ministry for Regulation). This could range from a full review of the performance of a regulatory change after a certain period, including whether it remains fit-for-purpose, to a more targeted or earlier assessment of the implementation of a regulatory change to check if any adjustments are desirable.

Publication of Regulatory Impact Statements and Supplementary Analysis Reports

- 60 The full text of all RISs, Supplementary Analysis Reports, and Post-Implementation Reviews must be published on the websites of the responsible agency and the Ministry for Regulation.¹³ Publication of RISs and Supplementary Analysis Reports should occur at the earliest of these events:
- 60.1 when Cabinet material is released under the proactive release requirements;

¹³ Subject to any redactions that may be required to withhold sensitive or confidential information.

- 60.2 the Government announces its decision not to regulate;
 - 60.3 any resulting Bill is introduced into the House or Amendment Paper is released;
 - 60.4 any resulting regulation is gazetted.
- 61 The URLs (rather than the full text) of published RISs are to be provided in the Explanatory Note of the relevant Bill, Amendment Paper, or secondary legislation.
 - 62 Hard copies of RISs, and Supplementary Analysis Reports if any, must be provided to select committees considering a Bill (or to the House of Representatives if the Bill is to be passed under urgency).

Further information

- 63 If you require further advice or information on the Impact Analysis Requirements, please contact the Ministry for Regulation.
- 64 Detailed guidance on meeting the government's Impact Analysis Requirements and preparing a RIS is available on the Ministry for Regulation's website.

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