

Office of the Minister for Regulation
Chair, Cabinet Expenditure and Regulatory Review Committee

Improving Regulatory Policy Making

Proposal

- 1 This paper seeks agreement to changes aimed at improving the quality of regulatory proposals and streamlining the regulatory analysis that Ministers receive. The paper proposes updates to the regulatory policy making process that:
 - 1.1 streamline Regulatory Impact Statements (RISs) by prescribing short coversheets to provide a summary at a glance for Ministers, reducing the impact analysis requirements for discussion documents, increasing the range of proposals exempted from the need to complete a RIS, and working with agencies to drive down the size of unnecessarily long analysis; and
 - 1.2 strengthen regulatory impact analysis, including by incorporating a provision in the Impact Analysis Cabinet Circular requiring agencies to provide early-stage information to the Ministry for Regulation (the Ministry) and ensuring better compliance with impact analysis requirements.

Relation to government priorities

- 2 This paper relates to the Coalition Government's priority to lift New Zealand's productivity and economic growth through improving the quality of government regulation.

Weaknesses in the regulatory impact analysis system

- 3 As I previously advised the Cabinet 100-Day Plan Committee, the Government has identified a number of weaknesses with current regulatory practice in New Zealand, including:
 - 3.1 insufficient public and Parliamentary scrutiny of proposed new regulations; and
 - 3.2 lack of regular, systematic reviews of the existing regulatory stock; and
 - 3.3 inadequate understanding of compliance costs in regulatory impact analysis (RIA), and/or regulations proceeding despite missing information or negative RIA findings, or lack of due consideration of options.
- 4 The Government established the Ministry to increase the focus on regulatory quality and to ensure open and transparent regulatory processes, through upholding standards for new regulatory proposals, undertaking reviews of

areas of poor regulatory performance, supporting agencies to meet their regulatory stewardship obligations, and lifting the capability of the regulatory workforce. Cabinet also agreed that I would develop core functions for the Ministry, including the evaluation of proposals for new regulation [CAB-24-MIN-0002 refers].

- 5 The Coalition Government has agreed to legislate to improve the quality of regulation, ensuring that regulatory decisions are based on principles of good law-making and economic efficiency. My paper that seeks agreement to release a discussion document on a proposed approach to the Regulatory Standards Bill is also being considered at this meeting of the Cabinet Expenditure and Regulatory Committee.
- 6 This legislation, however, will need to be supported by appropriate administrative arrangements. As a first step, I asked the Ministry to look at options to strengthen the regulatory policy making process, while also streamlining requirements to reduce the administrative burden placed on regulatory agencies, ahead of the passing of a Regulatory Standards Bill.
- 7 This paper seeks Cabinet agreement to changes to the processes for the scrutiny of regulatory proposals. Those affected by regulatory proposals have the right to know that the problem the regulation seeks to resolve has been well defined, that options have been well considered, and that affected parties have been consulted.

Improving the regulatory policy-making process

- 8 Insufficient attention is given to ensuring that regulatory intervention is directed at solving a well-defined problem and considering whether there is a strong rationale for government intervention. Rationales for intervention and the policy objectives of that intervention are often unclear, or, in the case of existing regulation, they are not regularly reviewed to ensure they remain valid.
- 9 A NZIER study in 2015 estimated the total administrative costs for New Zealand businesses to comply with New Zealand government tax and other regulatory requirements at between \$1.6 billion and \$5.6 billion. Their best estimate, at that time, was \$5 billion. Of this, \$2.8 billion related to the cost of complying with non-tax regulation.
- 10 Some administrative costs of regulation are unavoidable. The Ministry is concerned with reducing the costs of regulation that are beyond the minimum necessary to achieve the objectives of the regulation. I am proposing several changes to the impact analysis requirements for regulatory proposals to improve the quality of regulatory policy making and regulation and at the same time reduce the burden on Ministers and agencies that will free up resources to focus on Ministerial priorities. My changes will improve the quality of regulatory policy making by:
 - 10.1 improving the accessibility of information provided to Ministers about regulatory proposals; and

- 10.2 promoting earlier engagement by the Ministry to assess the quality of regulatory proposals.

Proposals to streamline and strengthen the regulatory policy process

- 11 I am proposing a suite of changes that will strengthen and streamline the regulatory policy process. The proposals in this paper include:
- 11.1 increasing the range of proposals exempted from the need to complete a RIS;
 - 11.2 changes to make documents more easily understood by Ministers and the public, including an updated RIS template and a coversheet that will provide readers with the key information at a glance (see draft in Appendix A). The Ministry will also create templates for Supplementary Analysis Reports and Post-Implementation Reviews;¹
 - 11.3 simplifying the quality assurance requirements for discussion documents to reduce the administrative burden for agencies; and
 - 11.4 a requirement that agencies must provide the Ministry with information when they commence a new regulatory change initiative that requires Cabinet approval, to enable more effective early intervention.

Streamlining the regulatory policy process

Increasing the range of proposals exempt from providing a RIS

- 12 There are a range of grounds for exempting a proposal from the requirement to produce a RIS, including proposals deemed to have only a minor impact on businesses, individuals or not-for-profits. I am proposing that the threshold is raised so that fewer RISs are required overall, but greater rigour is applied where merited. In particular, officials will be applying close scrutiny to proposals that restrict the use and exchange of private property. This new threshold will mean more exemptions can be granted and fewer RISs need to be produced, which will free up agency resource to focus on progressing other government priorities.

Improving readability with an 'at-a-glance' coversheet

- 13 The length of RISs has increased over recent years, and they have become disproportionate and not fit-for-purpose for Ministers or the public. I have

¹ Supplementary Analysis Reports are generally required if a Cabinet paper with inadequate Impact Analysis does proceed, and substantive decisions are made. The Supplementary Analysis Report is usually provided alongside draft legislation for consideration at the Cabinet Legislation Committee stage. Post-implementation reviews are evaluations of whether a regulatory change is meeting its objectives after a period of time.

asked my officials to improve the accessibility and usefulness of RISs by introducing an 'at-a-glance' coversheet.

- 14 This coversheet will draw on the template used in the United Kingdom and will contain a high-level summary of the information in the RIS that will run to a maximum of four pages to help readers navigate the whole document.

Reducing requirements for discussion documents

- 15 The current application of RIA requirements to discussion documents is burdensome and disproportionate. Under the current standard, a discussion document is assessed as if it was a RIS. This is an unnecessarily high standard, particularly where the discussion document is part of a consultation process to support later impact analysis at the point decisions are being made.
- 16 I propose to amend the quality assurance standard so that if a discussion document does not exclude options from consideration, it will not be required to contain extensive impact analysis. Instead, the assessment will only consider if the discussion document enables effective consultation that can support later, higher-quality, impact analysis when final decisions are made. I do not consider it is necessary to include extensive impact analysis in every discussion document. This change should simplify and streamline regulatory impact analysis and quality assurance processes, freeing up agency resources without major risk to discussion document quality. In practice, this will result in discussion documents being easier to produce and fit for purpose.

Reducing RIS sizes

- 17 The Ministry will update the RIS templates to remove unnecessary information and sections. This includes developing streamlined templates for Supplementary Analysis Reports and Post-Implementation Reviews, which will have fewer requirements than for full RISs. The Ministry will also be providing guidance to agencies to shift behaviour towards producing smaller RISs that are proportionate to the size and complexity of the regulatory proposals under consideration. Full analysis will still be expected for complex and significant proposals.

Strengthening the regulatory policy process

Earlier engagement with regulatory policy making

- 18 The ability of the Ministry (and the Treasury before it) to improve the quality of regulatory policy making is hampered by a lack of information about the regulatory pipeline. While agencies are recommended to engage with the Ministry early in the policy development process, there is no obligation to do so and few do. RISs are typically prepared late in the policy process, just prior to Cabinet consideration, when it is too late to revisit assumptions about the policy problem or question whether government intervention is justified.

- 19 I am proposing changes to the regulatory policy process to include a requirement for agencies to provide information to the Ministry when policy work commences on a new regulatory proposal that requires Cabinet approval. Having this early sight of new regulatory proposals will enable the Ministry, as the Government's lead regulatory advisor, to support Ministers and their agencies to deliver better regulatory policy proposals.
- 20 The information that agencies provide to the Ministry may include the initial problem definition, objectives, rationale for government intervention, and consultation plans. In most cases, agencies will contact the Ministry when the decision is made to begin policy development on a regulatory proposal, at the time agencies first brief their Minister. The Ministry will be seeking assurance that:
- 20.1 there is a strong problem definition (rooted in an understanding of the market failure or other problems driving the consideration of regulation); and
 - 20.2 the rationale for government intervention is strong (given that government intervention is not costless).
- 21 There may also be some scope to align the Ministry's early-stage assessment with the early assessments of legislation undertaken by the Legislation Design and Advisory Committee (LDAC). The Ministry could, if it is aware of a proposal that looks like it is raising significant constitutional or public law issues, suggest that the agency engage with LDAC. LDAC sometimes sees early-stage proposals where the basic policy problem or objective is unclear and could be similarly suggest that the Ministry is engaged.

Evaluating regulatory proposals

- 22 The Ministry will screen regulatory proposals with a view to deciding whether to engage further. This engagement will be prioritised towards regulatory proposals that have the potential for:
- 22.1 Significant direct or flow on effects on New Zealand's economy, society, or the environment; or
 - 22.2 Significant policy risks, or unclear problem definitions.
- 23 In the majority of cases, the Ministry will focus on matters that impact on the use and exchange of private property.² I consider that these types of proposals are likely to have the largest impact on New Zealand's long-term economic outcomes and are where the Ministry should direct its resources. In terms of its role in evaluating regulatory proposals, the Ministry will look at proposals that have a weak or contested analytical underpinning and where the problem could be differently defined.

² Such as: imposing restrictions on businesses' ability to operate or invest; or impacting market competition or structures, the cost or availability of infrastructure, access to finance, or New Zealand's international connections.

- 24 Agencies dedicate a significant level of time and resources to impact analysis. The strengthening approach I am proposing will also have a streamlining effect that will make regulatory impact analysis easier to plan for, prepare, and progress through the system on the basis of a robust problem definition and strong case for government intervention. Fewer, but higher-quality RIS being prepared as a result of Ministry engagement in the early stages of policy development will reduce the time and resource that agencies need to allocate to impact analysis.

Developing the Government's legislation programme

- 25 The Leader of the House is responsible for preparing the Legislation programme, with support from Cabinet Office and the Parliamentary Counsel Office. I have agreed with the Leader of the House and the Attorney-General that the Ministry will be consulted before bids are submitted and have access to bids for new legislation after they are submitted to Cabinet Office. The Ministry will also have access to the Legislation Programme once it is agreed by Cabinet. The Ministry is working with the Cabinet Office to update the legislation bid template.
- 26 This access would give the Ministry oversight of the nature of proposed new legislation and enable it to carry out its core function of evaluating new regulatory proposals. I anticipate this will also help to incentivise early engagement with the Ministry on new regulatory policy initiatives and support its work with agencies to raise the quality of regulation.
- 27 Once the Legislation Programme is finalised each year, access to the Programme and copies of all the successful bids will provide the Ministry with oversight of the planned legislation for the Parliamentary term. This will assist me to achieve my goal of preventing poorly conceived or unnecessary regulation being progressed.

Availability of regulatory impact statements for Ministerial consultation

- 28 There are currently no rules about when in the policy process RISs must be provided to Ministers, beyond the ultimate deadline that it must be available at the time the relevant Cabinet paper is lodged. The Ministry has generally recommended that a RIS should be finalised (with QA complete) by the time Ministerial consultation begins so that Ministers and their advisors have access to it alongside Cabinet papers.
- 29 It is, however, still common for RISs to still be incomplete when agency and Ministerial consultation is underway, and therefore RISs are often not circulated. I do not believe that this provides Ministers with the best information possible on which to provide feedback when they are consulted.
- 30 I am proposing that the Impact Analysis Cabinet Circular and Cabinet Office guidance are amended to state that, at the latest, a draft RIS must be provided along with the draft Cabinet paper for Ministerial consultation. This would provide an opportunity for Ministers and their advisors to better understand the proposal and engage with the analysis.

Ensuring compliance with Cabinet's impact analysis requirements

Reporting on the quality of regulatory impact analysis

- 31 All Cabinet papers have an impact analysis section which sets out whether the proposal triggers the RIA requirements, whether it is exempt, or whether a RIS has been prepared and the QA panel's statement about whether the RIS meets or does not meet QA criteria. Where a Cabinet paper triggers the impact analysis requirements but does not comply with them (e.g. because the proposal is missing a compliant RIS), it is also noted in this section.
- 32 I am concerned by the number of proposals that come to Cabinet that do not comply with the impact analysis requirements. Under current settings, Cabinet Committee Chairs have discretion to decline to add papers to a meeting agenda where they are non-compliant with RIA requirements. Officials advise me that they are not aware of this mechanism ever being used. To address the issue of non-compliant papers being submitted for consideration by Cabinet, I am proposing two changes.
- 33 First, my officials are working with the Department of the Prime Minister and Cabinet to amend the template for Cabinet papers to include a recommendation noting whether or not the paper complies with Cabinet's impact analysis requirements (in addition to the impact analysis section). This recommendation would have the effect of more clearly signalling where a paper was not compliant. Secondly, the Ministry already compiles data on compliance, but I intend that the Ministry will begin to publicly report on how well each portfolio is meeting its RIA responsibilities. The Ministry will continue to engage with agencies to provide support where necessary.

Quality reviews

- 34 There has been very limited central monitoring of agency RIA quality assurance since 2016 (as distinct from the quality assurance of specific RISs undertaken by Treasury and now the Ministry). To address this gap, the Ministry will be reinstating periodic quality audits to monitor the adequacy of agency RIA quality assurance. This monitoring will also provide insights into where the Ministry should direct its resources.
- 35 Where the Ministry is concerned about a pattern of low-quality RISs within an agency and believes that a greater degree of oversight by senior management is necessary, the Chief Executive of the Ministry may engage with the relevant agency to set expectations.

Other changes to improve the regulatory impact analysis system

- 36 In addition to the changes noted above, I propose to make a number of minor changes to update the Cabinet impact analysis circular, including:
- 36.1 Reflecting existing practice by explicitly enabling the use of multi-agency QA panels to give agencies the freedom to draw on the most

experienced QA panellists from across the public service to improve the efficiency of RIS QA;

36.2 updating the framing of the circular to align with our international obligations including mandatory public consultation obligations and broad expectations for the provision of impact analysis for proposed regulatory changes;

36.3 updating the language around Supplementary Analysis Report requirements to align with current practice; and

36.4 updating the language of various exemption grounds.

37 I expect the updated circular will be issued by the end of 2024, to come into effect in early 2025. The Ministry will provide agencies with further information about transitional arrangements in due course.

38 s9(2)(f)(iv) [REDACTED]

Cost-of-living Implications

39 There are no cost-of-living implications arising from the proposals in this paper.

Financial Implications

40 The activities undertaken by government agencies arising from this paper will be funded through baseline funding.

Use of external Resources

41 One full time equivalent contractor resource was involved for approximately two months in the preparation of this paper while permanent recruitment was undertaken following the establishment of the Ministry.

Legislative Implications

42 This proposal has no direct legislative implications.

Impact Analysis

Regulatory Impact Statement

43 This paper does not seek agreement to regulatory proposals and, therefore, Cabinet’s impact analysis requirements do not apply.

Climate Implications of Policy Assessment

44 There are no climate implications arising from this paper.

Population Implications

45 There are no population implications arising from this paper.

Human Rights

46 There are no human rights implications arising from this paper.

Consultation

47 The following departments and agencies were consulted on this paper: the Inland Revenue Department, the New Zealand Customs Service, the Ministry of Housing and Urban Development, the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry of Health, the Ministry of Education, the Department of Internal Affairs, the Ministry for the Environment, the Department of Conservation, the Ministry of Justice, the Ministry of Transport, the Ministry of Social Development, the Parliamentary Counsel Office, the Treasury, and the Department of Prime Minister and Cabinet.

Communications

48 No announcements are planned as a result of this paper. An updated Cabinet Office circular will be released to implement the changes agreed by Cabinet.

Proactive Release

49 We intend to proactively release this Cabinet paper, subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister for Regulation recommends that the Committee:

- 1 **note** that stronger regulatory oversight is required due to the weaknesses in New Zealand's current regulatory practice;
- 2 **note** that the changes to the regulatory policy-making process proposed in this paper will improve the quality of regulatory policy-making;
- 3 **note** that the Ministry for Regulation (the Ministry) will improve the readability of Regulatory Impact Statements by introducing a four page 'at-a-glance' coversheet;
- 4 **agree** that the regulatory impact analysis system is updated to:
 - 4.1 raise the threshold for the minor impacts exemption to reduce the

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- number of Regulatory Impact Statements required to be produced;
- 4.2 streamline the requirements for discussion documents so that agencies only need to consider whether the discussion document supports effective consultation and enables future impact analysis;
- 4.3 incorporate a requirement for agencies to provide early-stage information to the Ministry at the commencement of a new regulatory change proposal that requires Cabinet approval; and
- 4.4 require that Ministers must be provided with a Regulatory Impact Statement when they are consulted on a Cabinet paper proposing regulatory change;
- 5 **note** that Cabinet Office will supply the Ministry with copies of bids for new bills to be awarded places on the Legislation Programme;
- 6 **note** that I intend to make a number of minor changes to update the Impact Analysis Requirements Cabinet Office circular (circular), including:
- 6.1 explicitly enabling the use of multi-agency QA panels;
- 6.2 updating the framing of the circular to align with our international obligations;
- 6.3 updating the language around Supplementary Analysis Report requirements to align with current practice; and
- 6.4 updating the language of various exemption grounds;
- 7 **authorise** the Minister for Regulation to approve changes to the circular to give effect to the above decisions, in addition to any minor and technical updates;
- 8 **note** that an updated circular will be issued by the end of 2024, to come into effect from early 2025;
- 9 **note** that Cabinet policy paper template will be amended to include a recommendation noting whether each paper meets Cabinet's impact analysis requirements;
- 10 **note** that the Ministry will publicly report on how well each portfolio is meeting Cabinet's impact analysis requirements;
- 11 **note** that the Ministry will be reinstating periodic quality audits to monitor the adequacy of agency RIA quality assurance.

Hon David Seymour

Minister for Regulation

Appendix A: Draft Regulatory Impact Statement Cover Sheet

Regulatory Impact Statement: [Proposal title]

Decision sought	<i>eg, analysis produced for the purpose of informing: final/in-principle Cabinet decisions, the release of a discussion document, etc.</i>
Agency responsible	<i>ie, the agency/agencies responsible for developing this RIS</i>
Proposing Ministers	<i>ie, the Ministerial portfolios responsible for the Cabinet paper</i>
Date finalised	<i>ie, date the RIS was signed out</i>

Briefly describe the Minister's regulatory proposal

Summary: Problem definition and options

What is the policy problem?

- *What is the problem that the intervention is seeking to address?*
- *If the proposal is to modify an existing intervention, why is a change required?*
- *What are the views of regulated parties and/or other stakeholders about the problem?*
- *Why is government intervention required?*
- *What is the underlying market failure?*
- *Have non-regulatory options been explored?*
- *If the intervention involves a restriction on the use and exchange of private property, why is that desirable?*

What is the policy objective?

- *What are the intended outcomes of the change?*
- *How will success or failure be measured?*
- *What indicators will be used to measure this?*

What policy options have been considered, including any alternatives to regulation?

- *Include a description of the "do nothing" option and non-regulatory options.*
- *Clearly indicate which of these options is the Government's preferred option (if any)*

What consultation has been undertaken?

- *What form of consultation has been undertaken (e.g. targeted consultation, discussion document) and how long was the consultation period?*
- *If no consultation has been undertaken, why not?*
- *What do stakeholders think of the options?*
- *Do they support the Government's preferred option? If not, why not and which option(s) do stakeholders support?*

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Summary: Minister's Preferred Option

Costs (Core information)

Outline the key monetised and non-monetised costs, where those costs fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

- *Summarise the additional costs of the proposal relative to the counterfactual.*
- *What are the distributional impacts of this intervention, including on regulated parties?*
- *Does it have any impact on competition?*

Benefits (Core information)

Outline the key monetised and non-monetised benefits, where those benefits fall (e.g. what people or organisations, or environments), and the nature of those impacts (e.g. direct or indirect)

- *Summarise the additional benefits over the counterfactual.*
- *What are the distributional impacts of this intervention, including on regulated parties?*
- *Does the intervention have any impact on competition?*

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

- *Do the benefits outweigh the costs when considering quantitative and/or qualitative evidence?*
- *How will the benefit-cost ratio change over time?*
- *If you are unable to make a judgement on the balance of benefits and costs, why is that?*

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

- *When will the arrangements come into effect? Will there be transitional arrangements?*

- *Who will be responsible for ongoing operation and enforcement of the new arrangements? Are they confident it can be implemented effectively and efficiently? Is funding available for implementation?*
- *What are the implementation risks (including possible unintended consequences) and how will the risks be mitigated?*
- *Is a review of the regulatory system planned, which could include an evaluation of this proposal? If not, and it is a significant proposal, are you planning a separate review of this proposal?*

Limitations and Constraints on Analysis

Outline all significant limitations and constraints e.g. lack of data, other forms of evidence, constraint on the range of options considered, lack of time or freedom to consult

- *Identify where there are gaps in the evidence base, and any uncertainty in the assumptions underpinning the analysis.*
- *Explain the steps taken to address the gaps.*
- *To what extent have any limitations or constraints impacted on the quality of the analysis and can Cabinet still make an informed decision?*

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

**Signed by the responsible
Manager(s)**

Date: _____

Quality Assurance Statement

[Note this isn't included in the four-page limit]

Reviewing Agency:

QA rating: [Meets, partially meets, does not meet]

Panel Comment: