

The Chair  
**CABINET POLICY COMMITTEE**

## **ENHANCED REGULATORY IMPACT STATEMENT REQUIREMENTS**

### **PROPOSAL**

1 This paper seeks the Committee's agreement to implementation measures to give effect to Cabinet decisions made on 17 May 2006 (POL Min (06) 9/13 refers) to enhance the regulatory impact statement (RIS) requirements and other refinements.

### **EXECUTIVE SUMMARY**

2 As part of the Quality Regulation Review, Cabinet agreed to enhance the RIS regime, which is administered by the Regulatory Impact Analysis Unit (RIAU) in the Ministry of Economic Development (MED). This paper reports back on the implementation details of the enhancements and other refinements to the regime, which will come into effect on 1 April 2007.

3 To implement the requirement to prepare a draft RIS for consultation, I propose that:

- departments include questions and/or discussion of each of the substantive RIS sections (or a draft RIS) at a level that is reasonable given the stage of the policy development process in all discussion documents for proposals that require a RIS;
- where a draft RIS is not used, the discussion document should state that the substantive RIS sections have been covered off;
- the RIAU comment on discussion documents that are expected to result in proposals that are likely to have a significant impact on economic growth to advise on whether the design of the discussion document is likely to result in an adequate final RIS; and
- departments include the final RIS when circulating Cabinet papers for departmental consultation.

4 To implement the RIAU's focus on proposals that are likely to have a significant impact on economic growth, I propose that Cabinet agree to the more specific tests that have been developed (see section B).

5 I propose that Cabinet agree to the following further refinements.

- I propose that the RIS provide only a summary of the required information and that the RIS format be amended to focus on impacts and analysis. This will reduce duplication between the RIS and Cabinet paper.

- I propose to clarify ambiguities and update the rules around when a RIS is required.
- I propose that tax policy changes be exempt from the requirement to complete the implementation and review section of the RIS because of the extensive consultation embedded in the generic tax policy process. This involves consultation on implementation and provides adequate scope for review of tax policy changes.
- I propose that all RISs be published, rather than just RISs with Business Compliance Cost Statements (BCCSs), which is the current requirement.

## **BACKGROUND**

6 The Cabinet Policy Committee agreed on 17 May 2006 to strengthen the government's regulatory impact analysis requirements by:

- a introducing a requirement to prepare a draft RIS for consultation;
- b focusing the RIAU on those proposals with significant potential impact on economic growth, and allowing the RIAU to deem a RIS inadequate if it:
  - i fails to explain why the existing framework would not suffice to deal with the problem being addressed;
  - ii fails to include an appropriate cost-benefit analysis, risk assessment and statement of compliance costs; or
  - iii has been subject to manifestly inadequate consultation;
- c including an implementation and review section in the RIS.

7 The Committee also agreed to strengthen the quality of the process going forward by requiring all government agencies with the power to create and/or enforce regulatory frameworks or any aspects thereof to confirm that the principles of the Code of Good Regulatory Practice (namely, efficiency, effectiveness, transparency, clarity and equity) have been complied with and that the regulatory impact analysis has been undertaken in accordance with the new requirements.

8 Finally, the Committee directed officials from MED, the Treasury, the State Services Commission and the Department of Prime Minister and Cabinet to report back on the implementation details of these requirements as well as any other necessary refinements by 31 July 2006. The Chair of the Cabinet Policy Committee agreed to extend the deadline to 31 October 2006 (POL Memo (06) 19/2 refers).

## **COMMENT**

### **A Requirement to prepare draft RIS for consultation**

9 To implement the requirement to prepare a draft RIS for consultation, I propose to require that departments include questions and/or discussion of each of the substantive RIS sections (or a draft RIS) in all discussion documents for proposals that require a RIS, not just those that go through Cabinet. This will ensure that thinking

about the problem, options, and impacts of those options occurs early in the policy development process. The discussion document (or draft RIS) would not need to include a full assessment of the predicted impacts of options, but rather would provide a summary discussion at a level that is reasonable given the stage of the policy development process and/or questions on what the department already knows about the problem, objectives, range of options to solve the problem, predicted impacts of the options, and implementation and review options. This would assist departments in gathering information on each of these aspects. Where a draft RIS is not used, the discussion document would need to state that the substantive RIS sections have been covered off.

10 The RIAU would comment on discussion documents that are expected to result in proposals that are likely to have a significant impact on economic growth to advise on whether the design of the discussion document is likely to result in an adequate final RIS. I also propose that departments be required to include the final RIS when circulating Cabinet papers for departmental consultation.

## **B Focusing the RIAU on those proposals with significant potential impact on economic growth**

11 To implement the change to focus the RIAU on proposals with significant potential impact on economic growth, I propose the following tests.

(1) To be considered for review by the RIAU, proposals must affect:

- the ability or incentives of businesses to innovate, invest or operate; or
- competition in markets, the ability to enter markets, or the structure or make-up of any markets; or
- the degree of international connection between New Zealand and overseas markets, particularly the single economic market between New Zealand and Australia; or
- the cost or availability of infrastructure or related services; or
- the availability of, or access to, finance for business growth.

(2) In terms of significance, all proposals with large impacts on any of the above factors will be reviewed by the RIAU. 'Impact' includes both benefits and burdens, and can be measured by qualitative or quantitative data, including the monetary impact on the economy or the number of businesses affected. The RIAU will only review proposals with lesser impacts on the above factors if they are:

- novel or contentious, or in a novel or contentious area; or
- likely to have a disproportionate impact on a sector, region or part of the economy;<sup>1</sup> or
- likely to create inconsistency between New Zealand's domestic law and the Trans-Tasman Mutual Recognition Arrangement; or
- likely to restrict economic activity (for example, proposals that ban or require licensing for a business or economic activity).

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<sup>1</sup> This will not capture all sector-specific regulation.

12 The RIAU will produce guidance material that explains the tests further, including guidance on the definition of “large” and how the tests will be applied.

13 The RIAU will continue to review all consultation-stage Council of Australian Government RISs with trans-Tasman implications (regardless of their significance) as per the protocol between the Australian Office of Regulation Review and RIAU.

### **C Requirements for proposals that are not reviewed by the RIAU**

14 The RIAU will not review proposals that are not likely to have a significant impact on economic growth. Departments will need to take responsibility for their own regulatory impact analysis and ensure they meet the adequacy criteria (including the enhancements agreed to by Cabinet on 17 May 2006). Some departments will incur costs as a result of strengthening their internal processes.

### **D Reducing duplication between the RIS and Cabinet paper**

15 DPMC, in consultation with other central agencies, is planning to undertake some work on improving the quality of the presentation of Cabinet papers and policy advice. Potential changes to the Cabinet paper format may be considered as part of this work. In the meantime, to minimise duplication between the RIS and the Cabinet paper, I propose to clarify in the requirements for RISs that the RIS should focus on providing a summary of the required information and should focus on the analysis of the options, including why the preferred option is best, with less background and elaboration. The Cabinet paper should take account of the regulatory impact analysis that has been undertaken.

16 To properly embed the focus on analysis of options into the RIS and reduce the length of the RIS headings, I propose to amend the RIS format. I propose that the Business Compliance Cost Statement (BCCS) be incorporated into the RIS, which continues the focus on minimising business compliance costs. The proposed format is set out in the appendix.

### **E Regulatory Impact and Business Compliance Cost Statement section of Cabinet paper**

17 I propose to amend the “Regulatory Impact and Business Compliance Cost Statement” section of the Cabinet paper by renaming it “Regulatory Impact Analysis” and requiring that it state:

- whether the department confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation RIS requirements, have been complied with;
- whether a RIS has been prepared, whether the RIAU considers the RIS to be adequate (or, if the RIS is not reviewed by the RIAU, whether the department considers it to be adequate), and if a RIS has not been prepared, why not; and
- whether the final RIS was circulated with the Cabinet paper for departmental consultation.

## F Clarification of ambiguities and updating the rules around when a RIS is required

18 I propose to clarify that in the statement of when a RIS is required, 'statutory regulations' has the same definition as 'regulations' under section 2 of the Regulations (Disallowance) Act 1989 and that changes to 'regulations' that go to Cabinet for noting require a RIS.

19 The international treaty exemption is outdated given the work of MED and the Ministry of Foreign Affairs and Trade (MFAT) on a proposal to incorporate the core RIS information into the National Interest Analysis (NIA). MED will work with MFAT to clarify the international treaty exemption and will report back in the second report for the Quality Regulation Review on 31 March 2007.

20 The budget night legislation exemption is not achieving its objectives. To address these issues, I propose to change the budget night exemption's wording as follows (changes italicised).

Current	Proposed
where it is to give effect, in terms announced in the Budget, to a specific Budget decision, where the decision is to: <ul style="list-style-type: none"><li>• repeal, impose, or adjust a tax, fee or charge; or</li><li>• confer, revoke, or alter an entitlement; or</li><li>• impose, revoke, or alter an obligation</li></ul>	where it is to give effect <i>under Urgency</i> , in terms <i>first</i> announced in the Budget, to a specific Budget decision, where the decision is to: <ul style="list-style-type: none"><li>• repeal, impose, or adjust a tax, fee or charge; or</li><li>• confer, revoke, or alter an entitlement; or</li><li>• impose, revoke, or alter an obligation</li></ul>

## G Application of new requirements to tax policy proposals

21 I propose that tax policy proposals be exempted from the requirement to complete the implementation and review section of the RIS, because of the generic tax policy process. This involves consultation on implementation of legislative changes. It also provides scope for the identification of remedial issues and review of legislation when this is leading to unanticipated concerns.

## H Publication requirements

22 Currently all RISs to which a BCCS is attached are required to be published on the responsible department's website and a dedicated MED website, included in the explanatory note for bills that are introduced into the house, and attached to the press statement announcing the new policy. To increase transparency, I recommend that all RISs be published, rather than just those to which a BCCS is attached, which is the current requirement. There may be instances where it is undesirable to publish RISs or parts of RISs. The criteria set out in the Official Information Act 1982 will guide decisions as to whether RISs or parts of RISs should be withheld.

## **I Transitional and implementation arrangements**

23 It is proposed that all of the proposals in this paper will come into effect on 1 April 2007. The RIAU will prepare and disseminate guidance prior to 1 April 2007. This guidance will include further definition of the tests that determine which RISs the RIAU reviews and will cover the need to consider impacts on health, environmental, economic, social, and cultural costs and benefits. As part of this, a Cabinet Office Circular will be issued.

24 A regulatory impact analysis reference group of senior officials led by the Deputy Secretary responsible for the RIAU will be formed and will meet periodically to discuss the implementation of the RIS regime. The group will include officials who represent the economic, environmental, cultural, health, and social sectors.

### **CONSULTATION**

25 This Cabinet paper was circulated to the Department of Prime Minister and Cabinet, the State Services Commission, the Treasury, the Accident Compensation Corporation, the Department of Building and Housing, the Department of Internal Affairs, the Ministry of Transport, the Department of Labour, the Department of Conservation, the New Zealand Food Safety Authority, Local Government New Zealand, the New Zealand Customs Services, the Ministry of Fisheries, the Ministry of Social Development, the Ministry of Agriculture and Forestry, the Inland Revenue Department, the Ministry of Health, the Reserve Bank of New Zealand, the Ministry of Education, the Ministry of Research, Science and Technology, Land Information New Zealand, the Ministry of Justice, the Ministry of Culture and Heritage, Te Puni Kokiri, the Ministry for the Environment, Statistics New Zealand, the Ministry of Foreign Affairs and Trade, and the Ministry of Women's Affairs.

26 Comment was provided by the Department of Prime Minister and Cabinet, the State Services Commission, the Treasury, the Accident Compensation Corporation, the Department of Building and Housing, the Department of Internal Affairs, the Ministry of Transport, the Department of Labour, the Ministry of Fisheries, the Ministry of Social Development, the Ministry of Agriculture and Forestry, the Inland Revenue Department, the Ministry of Health, the Ministry for the Environment, and the Ministry of Foreign Affairs and Trade.

27 Comments have been incorporated into the paper.

### **FISCAL IMPLICATIONS**

28 The proposal has no direct fiscal implications. In the course of the identification of issues arising from the Quality Regulation review, consideration may be given to appropriate resources across the public sector.

### **LEGISLATIVE IMPLICATIONS**

29 The proposal has no legislative implications.

## REGULATORY IMPACT AND COMPLIANCE COST STATEMENT

30 A Regulatory Impact Statement is not required because the proposal does not have implications for legislation or regulations. The proposal does not have business compliance cost implications.

### PUBLICITY

31 Government departments will be informed of the new requirements and guidance will be prepared and disseminated prior to the effective date. I propose that this paper be published on the MED website.

### RECOMMENDATIONS

32 It is recommended that the Committee

1 **Note** that Cabinet agreed to changes to strengthen the regulatory impact analysis requirements on 17 May 2006 (POL Min (06) 9/13 refers).

2 **Agree** to require that:

- departments include questions and/or discussion of each of the substantive RIS sections (or a draft RIS) at a level that is reasonable given the stage of the policy development process in all discussion documents for proposals that require a RIS;
- where a draft RIS is not used, the discussion document should state that the substantive RIS sections have been covered off;
- the RIAU comment on discussion documents that are expected to result in proposals that are likely to have a significant impact on economic growth to advise on whether the design of the discussion document is likely to result in an adequate final RIS; and
- departments include the final RIS when circulating Cabinet papers for departmental consultation.

3 **Agree** that the following tests be used to determine which proposals will be reviewed by the RIAU.

To be considered for review by the RIAU, proposals must affect:

- the ability or incentives of businesses to innovate, invest or operate; or
- competition in markets, the ability to enter markets, or the structure or make-up of any markets; or
- the degree of international connection between New Zealand and overseas markets, particularly the single economic market between New Zealand and Australia; or
- the cost or availability of infrastructure or related services; or
- the availability of, or access to, finance for business growth.

In terms of significance, all proposals with large impacts on any of the above factors will be reviewed by the RIAU. 'Impact' includes both benefits and burdens, and can be measured by qualitative or quantitative data,

including the monetary impact on the economy or the number of businesses affected. The RIAU will only review proposals with lesser impacts on the above factors if they are:

- novel or contentious, or in a novel or contentious area; or
  - likely to have a disproportionate impact on a sector, region or part of the economy; or
  - likely to create inconsistency between New Zealand's domestic law and the Trans-Tasman Mutual Recognition Arrangement; or
  - likely to restrict economic activity (for example, proposals that ban or require licensing for a business or economic activity).
- 4 **Agree** that the RIS preparation requirements be changed so that a RIS should only contain a summary of the required information, should focus on analysis of the options, and should be of the format set out in the appendix.
- 5 **Agree** to amend the "Regulatory Impact and Business Compliance Cost Statement" section of the Cabinet paper by renaming the section "Regulatory Impact Analysis" and requiring that the section state:
- whether the department confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation RIS requirements, have been complied with;
  - whether a RIS has been prepared, whether the RIAU considers the RIS to be adequate (or, if the RIS is not reviewed by the RIAU, whether the department considers it to be adequate), and if a RIS has not been prepared, why not; and
  - whether the final RIS was circulated with the Cabinet paper for departmental consultation.
- 6 **Agree** that, for the purposes of determining when a RIS is required, 'statutory regulations' has the same definition as 'regulations' under section 2 of the Regulations (Disallowance) Act 1989 and that changes to 'regulations' that go to Cabinet for noting require a RIS.
- 7 **Note** that the Ministry of Economic Development will work with the Ministry of Foreign Affairs and Trade to clarify the international treaty exemption and will report back in the second report for the Quality Regulation Review on 31 March 2007.
- 8 **Agree** that the budget night legislation exemption to the RIS requirements be amended to read that a RIS is not required 'where it is to give effect under Urgency, in terms first announced in the Budget, to a specific Budget decision, where the decision is to:
- repeal, impose, or adjust a tax, fee or charge; or
  - confer, revoke, or alter an entitlement; or
  - impose, revoke, or alter an obligation'.

- 9 **Agree** that tax policy proposals be exempted from the requirement to complete the implementation and review section of the RIS.
- 10 **Agree** to extend the RIS publication requirements to apply to all RISs.
- 11 **Agree** that all of the above proposals will take effect on 1 April 2007.
- 12 **Note** that, as is the current requirement, the RIAU will ensure that the RISs it reviews incorporate health, environmental, economic, social, and cultural costs and benefits.
- 13 **Agree** that a Cabinet Office Circular be issued that updates the RIS requirements.
- 14 **Agree** that this paper be published on the MED website.

Hon Lianne Dalziel  
**Minister of Commerce**

## Appendix – New RIS format

Changes italicised.

Section title	Required information
Executive summary	<ul style="list-style-type: none"> <li>• <i>One paragraph of no more than 150 words summarising the problem, the preferred option, and the main impacts.</i></li> </ul>
Regulatory Impact Analysis Unit review and adequacy statement	<ul style="list-style-type: none"> <li>• <i>Whether the Regulatory Impact Analysis Unit has reviewed the RIS.</i></li> <li>• <i>Whether the RIS is adequate according to the adequacy criteria.</i></li> </ul>
Status quo and Problem	<ul style="list-style-type: none"> <li>• Brief, high-level summary of key features of the current situation – not just features of the current regulation.</li> <li>• Summary of why government action is needed, including why the current arrangements are insufficient to address the problem. This should contain an appropriate level of detail on the status quo's costs and benefits (including compliance costs, risks and opportunities).</li> </ul>
Objectives	<ul style="list-style-type: none"> <li>• The objectives that options are measured against.</li> </ul>
Alternative options (where these were considered)	<p>For each option that is neither the status quo nor the preferred option:</p> <ul style="list-style-type: none"> <li>• Brief, high-level summary of key features of the option.</li> <li>• <i>Why it is not the preferred option, including an appropriate level of detail on the benefits and costs (including compliance costs, risks and opportunities).</i></li> </ul>
Preferred option	<ul style="list-style-type: none"> <li>• Brief, high-level summary of key features of the preferred option.</li> <li>• Why it is preferred and a statement of all of the proposal's impacts, including an appropriate level of detail on the benefits and costs (including compliance costs).</li> <li>• <i>A risk assessment with a description of how risks will be/are being mitigated.</i></li> <li>• Steps that have been taken to minimise compliance costs, if any.</li> <li>• <i>A paragraph that briefly describes how the preferred option would impact on the stock of regulation, including whether the proposal overlaps and interacts with existing rules, whether the proposal makes any existing rules redundant, and whether these rules are being removed or altered as part of the proposal.</i></li> </ul>
Implementation and review	<ul style="list-style-type: none"> <li>• <i>How the proposal will be given effect, including timetables where available.</i></li> <li>• <i>Plans for notifying affected parties of what they need to do to comply with any new requirements.</i></li> <li>• <i>The enforcement strategy that is to be implemented to ensure that the preferred option achieves the public policy objective.</i></li> <li>• <i>Plans for monitoring and evaluating the preferred option, including key dates if any.</i></li> </ul>
Consultation	<ul style="list-style-type: none"> <li>• Who was consulted.</li> <li>• What the form of consultation was.</li> <li>• <i>Key feedback from stakeholders and government departments on each of the options considered, with particular emphasis on any significant concerns that were raised about the preferred option, how the department authoring the RIS altered the proposal to address these concerns, and if they did not alter the proposal, why not.</i></li> </ul>