

The Regulatory Review

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"Significance" and RIA

The strengthened Regulatory Impact Analysis regime has been in place since 1 April 2007 and has a number of important differences from the 'old' regime. The key differences are outlined in the Cabinet Office Circular CO (07) 3 and discussed further in the [Regulatory Impact Analysis Guidelines](#). Two of the key changes are to the role of the Regulatory Impact Analysis Unit (RIAU) and the increased analytical requirements associated with Regulatory Impact Analysis (RIA).

Significance

The RIAU is now focussed on regulatory proposals that are likely to have a significant impact on economic growth. There has been considerable debate around defining 'significance'. The Cabinet Office Circular contains guidance on significance and despite there being some 'greyness' about the definition, our impression is that generally the tests have been applied consistently across different agencies. Over the course of the past seven months we have had a number of discussions with agencies about whether proposals are significant or not. It is important that agencies consider the guidance in the Circular and form their own view before progressing too far.

The RIAU encourages agencies to discuss the question of significance with the unit at an early stage. If a proposal is not significant, it doesn't change the adequacy tests or the process requirements, it simply means that the RIAU will not review the RIA and the Regulatory Impact Statement (RIS) and comment on whether they are "adequate". In a few cases significant proposals proceeded to a very late stage before they were sent to the RIAU for review, which resulted in unnecessary difficulties for both the RIAU and the agencies concerned. Given the importance the government attaches to good quality processes, everyone benefits from early discussions.

The RIA undertaken

The RIAU is able to deem the RIA or RIS inadequate if they:

1. Fail to explain why the existing framework would not suffice to deal with the problem being addressed;
2. Fail to include an appropriate cost-benefit analysis, risk assessment and statement of compliance costs; or
3. Have been subject to manifestly inadequate consultation.

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In many cases, all of the analysis supporting major policy proposals will not be contained in an individual RIS (or the associated Cabinet Paper). From the RIAU's perspective, it is the nature and depth of analysis that is important to meet the first two adequacy tests set out above for the RIA. The RIAU has been impressed with the nature and depth of analysis undertaken by some agencies prior to the development of a number of regulatory proposals.

One of the key challenges for the RIAU is undertaking the necessary assessments within the timeframes requested by departments. Wherever possible, the RIAU requires 20 days notice of proposals because of the depth of analysis undertaken – less than 20 days does not allow the RIAU to do the analysis justice. In a few cases work has been undertaken on a RIS to address questions relating to points 1 and 2 above that if provided to the RIAU earlier would have relieved a lot of stress on the unit and the agency concerned. In one or two cases, the RIAU has simply had to report to Cabinet that insufficient time was provided by the department to allow for the RIA and RIS to be reviewed for adequacy.

RIA Evaluation Programme

The RIAU is currently conducting an evaluation of departmental compliance with enhanced RIA requirements. A sample of 8

RIAs and 12 RISs for proposals deemed by agencies as not likely to have a significant impact on economic growth, and considered by Cabinet between 1 April and 30 August 2007, have been selected for review. NZIER has been contracted to study the patterns of experience with the strengthened regime and report on areas where things are being done well and areas where compliance with the RIA requirements can be enhanced.

The aim of the evaluation programme is to identify learnings and possible enhancements to the RIA regime as a whole. It is important to note that it is not the intention of the evaluation programme to, in any way, revisit the final regulatory proposals that were presented to Cabinet or final Cabinet decisions.

The evaluation will be completed by the end of February 2007. The evaluation programme is expected to assist everyone in terms of how the significance tests are applied and in learning from the experiences of the last seven months. In addition, the RIAU is considering how to improve the guidance around significance and welcomes any comments and suggestions which can be forwarded to our email address, RIA@med.govt.nz.

Richard Hawke

Publication Requirements for RISs

Publication requirements for RISs are set out in paragraphs 55-57 and appendix 3 of the Regulatory Impact Analysis Guidelines and are also contained in the Cabinet Circular on the RIA regime [CO (07) 3, para 22-25].

Under the enhanced RIA regime, all RISs are required to be:

- attached to or referenced in the press statement announcing any new policy (for example, provide a link to the internet page where the RIS has been posted);

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- lodged on the responsible department's website, and on the dedicated Ministry of Economic Development (MED) website <http://www.med.govt.nz/regulatoryimpact>; and
- included in the explanatory note to bills that are introduced into the House.

There may be instances where it is undesirable to publish the RIS or sections of the RIS. The provisions of the Official Information Act 1982 should guide decisions about whether a RIS, or part of a RIS, should be published.

The purpose of the publication requirements is to ensure transparency of the policy making process, which will assist the Government and also the select committees and Parliament in their decision making roles. It also helps to inform the public of the rationale and evidence behind the policy.

While this publication process is working in most cases, we have noticed that there are some aspects which departments can improve.

Guidance on Discussion Documents

As commented in the May 2007 edition of Regulatory Review, the new Regulatory Impact Analysis (RIA) regime puts greater emphasis on the need to undertake quality analysis throughout the policy process for regulatory proposals. This includes discussion documents for proposals that are likely to result in a regulatory intervention. For proposals to which the RIA requirements apply (or may apply) discussion documents must include questions and/or discussion of the substantive RIA elements (e.g. problems, what the range of feasible options is, impacts of those options) or they can include a draft RIS. The amount of detail/quantification needs to be sufficient for the stage of policy development. The development of the proposals also needs to comply with the Code of Good Regulatory Practice.

Firstly, when the responsible Minister and/or Cabinet determines the RIS is ready for publication, departments must send the departmental website link for each RIS to MED at ria@med.govt.nz in a format compliant with the e-government guidelines so that they can be published on the dedicated MED website. This requirement however is often overlooked.

Secondly, when multiple RISs are required for a large policy programme, it is useful to include all RISs whenever possible in the explanatory notes to the bill. Where a decision is made to include an aggregated RIS, departments should consider incorporating references to individual RISs published on the department's website. It is advisable to talk to the Parliamentary Counsel Office (PCO) as early as possible when the explanatory note may require multiple RISs.

Jean-Christopher Somers

To encourage feedback from stakeholders that will contribute to the department's analysis, inclusion of questions in addition to the RIA elements or draft RIS is recommended. [Appendix 2](#) of the Guidelines on the Regulatory Impact Analysis Requirements contains guidance on writing a good RIS for consultation purposes or a discussion document that complies with the substantive RIA elements.

For proposals that are likely to have a "significant impact on economic growth", departments are required to submit discussion documents to the RIAU for comment. The RIAU will advise on whether the design of the discussion document is likely to enable the department to do adequate RIA analysis. Generally the RIAU will need 10 working days to comment on discussion documents.

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Inclusion of the RIA elements or a draft RIS in discussion documents ensures that the analysis of the problem, options and impacts of those options is discussed early in the policy development process and that stakeholders are consulted on the department's analysis.

From discussion documents seen to date by the RIAU it appears that the style and content has improved with the new RIA requirements and this should encourage stakeholders to engage in the policy development process. Some have included a reference to the discussion document containing the

substantive RIA elements with an explanation of what that means and seeking feedback on the RIA. The Code of Good Regulatory Practice has also been referred to and included. These initiatives and this level of engagement is positive and contributes to more informed stakeholder feedback, assists with practical, robust, consultative and accountable policy making, and contributes to improving the quality of regulatory interventions.

Elizabeth McDonald

Quality Regulation Review – Final Report

In previous issues of The Regulatory Review, we have tracked the progress of the Government's 15-month review of the quality of regulation (the Review), which is now complete. In this issue, we summarise the key findings of the Review and outline what is being done post-review to ensure the quality of New Zealand's regulatory environment in the future.

The Review was announced by the Government in May 2006 to ensure that New Zealand's regulatory environment is supportive of the government's economic transformation agenda. A Ministerial Group, led by the Minister of Commerce and Small Business, was convened to undertake the Review and was supported by an inter-departmental Taskforce comprising of senior officials from key government agencies and led by MED.

A number of projects were undertaken as part of the Review and have been discussed in previous editions of The Regulatory Review.

These include:

- studies of the regulatory issues facing the wine, hospitality, horticulture, and retail sectors. The outcomes of these studies are summarised in the [Sector Studies Report](#);

- studies of the interface between various pieces of legislation, including the interaction of building and resource consent processes, and the interaction of the Health and Safety in Employment, Hazardous Substances and New Organisms, and ACC legislation;
- initiatives to improve regulatory process disciplines, including strengthening the RIA requirements, piloting a business cost calculator, promoting the use of regulatory flexibility, and developing guidelines on regulatory compliance;
- progressing an Omnibus Bill to fast track a number of legislative amendments to reduce compliance costs for business; and
- a review of New Zealand's standards and conformance infrastructure, which resulted in Cabinet agreeing to a number of proposals to strengthen the infrastructure and its relationship with regulators.

Two Milestone Reports were prepared as part of the Review – the first in [October 2006](#) and the [Second in April 2007](#).

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Final Report

The Minister of Commerce released the findings of the Review on 5 September 2007 and the [Final Report](#) to Cabinet and the [Sector Studies Report](#) were made publicly available. The review concluded that the current regulatory environment for business is in fairly good shape, but that there is scope to improve the way rules are communicated to business, implemented and enforced.

The Review made good progress in addressing a number of the specific issues raised by business during the Review. Examples of the Review's achievements for business include:

- ACC and Inland Revenue have agreed to improve coordination of data collection and share information on businesses;
- The adjustment date for excise and the Alcohol Advisory Council of New Zealand (ALAC) levy paid by the wine industry are now aligned;
- The Inland Revenue Department and the Companies Office now enable companies to register for GST at the time of incorporation;
- The Department of Labour undertook a number of initiatives in the first half of 2007 to improve the information and guidance to business on a range of issues, including probationary periods, the parental leave process and returning to work, and the health and safety of contractors;
- The Department of Labour released an online tool to assist with entitlement calculations associated with the Holidays Act in March 2007; and
- Statistics New Zealand is implementing a Respondent Load Strategy that provides a framework for other initiatives that will reduce respondent load over the next three years, such as reduction of load for individual small to medium enterprises where the load is

demonstrated to be unreasonable and out of step with the industry typical load.

Looking Forward

In announcing the Review's findings, the [Minister of Commerce](#), Hon Lianne Dalziel, noted that "Getting regulation right is a matter of continuous improvement ... that takes more than a one-off review. It takes a change in the way we think about regulation and the way we work with business, and that's what we've achieved".

The government's post-review approach to ensuring the quality of New Zealand's regulatory environment focuses on four objectives: ensuring the quality of new regulation; improving the quality of existing regulation; developing a culture of good regulatory practice; and building the capability of regulators and of business.

The Ministry of Economic Development will implement an ongoing programme of sector studies to ensure continuous improvement of the regulatory environment and a two-year trial of a Business Cost Calculator to quantify the compliance costs of regulation. The government will examine the feasibility of introducing Standard Business Reporting (as used in the Netherlands and Australia) whereby businesses can submit financial data to several government agencies in just one transaction, cutting the time and effort spent preparing and filing reports to government.

Review Documents

Copies of the key documents prepared as part of the Review, including the documents referred to in this article, other reports, Cabinet papers and media statements, are available on the MED website at: www.med.govt.nz/qrr.

Dawn Leung-Wai

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New Regulatory Flexibility Guidelines and Regulatory Compliance Guidelines

As part of the Quality Regulation Review the Ministry has produced new Regulatory Flexibility Guidelines and Regulatory Compliance Guidelines to assist policy makers in their consideration of wider aspects of policy development. The aim is to produce better quality regulation, or laws, that deliver closely to the outcome sought by government in an efficient and low cost way.

Regulatory Flexibility Guidelines

The purpose of these Guidelines is to assist and encourage policy analysts to consider options for flexibility when developing policy so as to minimise compliance costs. This can be done through the design of options. Regulatory flexibility has the potential to increase the net benefit to society arising from regulation - it allows us to eliminate or change the application of a law, or a fee, where in certain situations it would result in costs greater than the benefits arising from complying with the law. This recognises that the costs and benefits to be obtained via compliance with a law will potentially vary according to characteristics of the regulated population such as business size, location and industry activity.

Examples of regulatory flexibility are present in a number of New Zealand laws. Smaller companies are exempt from full reporting requirements under the Financial Reporting Act (1993) and the Securities Commission can grant exemptions from the requirements of the Securities Regulations.

Regulatory Compliance Guidelines

The purpose of these guidelines is to assist policy makers and regulators in their consideration of the design, implementation and management of compliance strategies during policy development. Compliance is important to regulatory success and

inadequate attention to compliance, especially at the policy development stage, is often the cause of regulatory failure.

These Guidelines are a practical tool to improve compliance. They provide advice, through a checklist approach, on how to consider a mix of strategies to achieve cost effective compliance when considering new policy or regulation. At the outset it urges policy makers to consider the strategic context of regulation, the purpose or intent of regulation, and the size of the problem. It also provides guidance on how to consider the regulatory context - who is compliance targeted at, how likely is compliance, who would bear the risk of non-compliance etc. Other areas of assistance are prompts around how to develop a compliance strategy, implementation, monitoring, evaluation and review.

Policy Development Toolkit

These documents complement the *Guidelines on the Regulatory Impact Analysis requirements*, and other related guidance such as *Guidelines on Assessing Policy Options*. For each stage of policy development you should visit the [Policy Development Toolkit](#) where the suite of Guidelines to assist better quality policy development can be found.

Graham Boxall

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OECD Reports

In the last few months the OECD has released a number of interesting papers relating to Regulatory Impact Analysis and Regulatory Management and Reform in general. A short summary of these is provided below:

Regulation inside government: Conceptual framework - outline for case studies GOV/PGC/REG(2007)9

This paper presents an outline of a conceptual framework that can be used for analysing regulation of government by itself - Regulation Inside Government (RIG). The paper describes some main purposes of control of public sector activities and four generic modes of exercising this control, to a varying degree relying on regulation. It is intended to form the basis of discussion prior to a survey and case studies on Regulation Inside Government among interested member countries later in 2007, with a focus on how to improve the institutions and tools for ensuring quality regulation.

Regulatory efficiency and effectiveness: Initial stocktaking

DAF/AS/WD(2007)4

This paper provides some background on the issue of regulatory efficiency and effectiveness and attempts to perform a preliminary stocktake (in the context of the financial sector) in order to assess trends and identify options for possible further work.

Ensuring regulatory effectiveness and efficiency - issues for discussion

DAF/CMF(2007)19

This paper was prepared to provide a background for the discussion on the "Regulatory efficiency and effectiveness: initial stocktaking paper".

Ensuring regulatory effectiveness and efficiency - case 1: Banks/banking services

DAF/CMF(2007)20

This paper outlines case studies in relation to the "Regulatory efficiency and effectiveness: initial stocktaking paper".

Integrating competition assessment into regulatory impact analysis

DAF/COMP(2007)8

This document explains how competition assessment can be incorporated into regulatory impact analysis and is part of the Competition Assessment Toolkit. The Toolkit is designed to help government officials assess whether laws or regulations unduly restrict competition and provides guidance on how to achieve policy objectives that are consistent with competition.

Regulatory management systems across OECD countries: Indicators of recent achievements and challenges

GOV/PGC/REG(2007)5

This paper presents composite indicators of regulatory management systems. This complements and extends previous results discussed at the 2006 September Working Party meeting. The current set of indicators will fit into further analytical work.

Risk and regulation: Glossary and draft questionnaire for stocktaking

GOV/PGC/REG(2007)6

This paper provides a succinct conceptual framework and proposes a draft questionnaire as part of the next phase in the Secretariat work on risk and regulation. It includes a glossary of risk terminology as part of the first stage of the project.

Methodological guidance and frameworks for RIA

SG/GRP(2007)6

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This paper presents a review of a range of methodological issues for RIA based upon a comparative analysis of the guidance material of selected member countries and academic literature. A set of draft proposed guidelines on aspects of RIA methodology are drawn from the conclusions of the paper. The paper and the draft guidelines are intended to form

the basis of discussion by the Working Party on Regulatory Management and Reform and will be further refined following this discussion before being presented to the Working Party for endorsement.

Richard Hawke

Housekeeping

- Please remember to keep the Regulatory Impact Analysis Guidelines in mind right from the beginning of the information research and gathering stage (follow this link to see a RIA [‘Hint and Tips Sheet’](#)). While this is extra work in the short-run, in the long run it will mean much less work for both the unit and departments.
- Also, please remember to continue to put a lot of thought into alternative options to your proposals including, and where applicable, non-regulatory options (follow this link to see [Guidelines on Assessing Options](#)).

Changes to the Regulatory Policy Team

In addition to our existing Regulatory Policy Team members, Richard Hawke, Dawn Leung-Wai, Jim McNicholas, Elizabeth McDonald and Jean-Christopher Somers, there have been four new additions to the team since the last issue of the Regulatory Review. We are pleased to welcome Hayden Fenwick and Ben O’Meara who are joining us as Senior Analysts, and our new Analysts Ben Temple and Jeff McDonald.

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