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Report prepared for the Treasury

# Regulatory Impact Analysis evaluation 2015

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*Vhari McWha, Jo Smith, Kieran Murray*

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31 July 2015



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|  |   |  |
|--|---|--|
| <b>Wellington</b><br>Level 9, 1 Willeston St<br>PO Box 587<br>Wellington 6140<br>Ph: +64 4 915 7590<br>Fax: +64 4 915 7596 | <b>Auckland</b><br>Level 8, 203 Queen St<br>PO Box 2475<br>Auckland 1140<br>Ph: +64 9 909 5810<br>Fax: +64 9 909 5828                                     |  |
| <b>Sydney</b><br>Level 14, 68 Pitt St<br>GPO Box 220<br>NSW 2001<br>Ph: +61 2 9234 0200<br>Fax: +61 2 9234 0201            | <b>Canberra</b><br>Unit 3, 97 Northbourne Ave<br>Turner ACT 2612<br>GPO Box 252<br>Canberra City, ACT 2601<br>Ph: +61 2 6267 2700<br>Fax: +61 2 6267 2710 | <b>Melbourne</b><br>Level 2, 65 Southbank<br>Boulevard<br>GPO Box 3179<br>Melbourne, VIC 3001<br>Ph: +61 3 9626 4333<br>Fax: +61 3 9626 4231 |

For information on this report please contact:

Name: Kieran Murray, Managing Director  
Telephone: +64 4 915 7592  
Mobile: +64 21 245 1061  
Email: [kmurray@srgexpert.com](mailto:kmurray@srgexpert.com)



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## Glossary

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|      |                                 |
|------|---------------------------------|
| ADS  | Agency Disclosure Statement     |
| CBA  | Cost-benefit analysis           |
| IQA  | Independent quality assurance   |
| MCA  | Multi-criteria analysis         |
| QA   | Quality assurance               |
| RIA  | Regulatory Impact Analysis      |
| RIAT | Regulatory Impact Analysis Team |
| RIS  | Regulatory Impact Statement     |





## Executive summary

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We were commissioned by Treasury to provide an independent evaluation of the quality of Regulatory Impact Statements (RISs) and the accompanying Independent Quality Assurance (IQA) statements for a sample of 50 RISs selected by Treasury. The objectives of this evaluation were to:

- help agencies to improve the quality of their Regulatory Impact Analysis (RIA) and how this is presented in the RISs they produce, specifically through providing:
  - examples of good practice and common errors;
  - suggestions for ways to improve the quality of analysis or of its presentation;
  - suggestions for any additional analysis that would improve RIS quality
- help the Regulatory Impact Analysis Team in Treasury (RIAT) improve the assistance and guidance it gives to agencies; and
- inform Ministers, Chief Executives and others about the performance of agencies generally in delivering this element of the RIA requirements.

We assessed 44 RISs for which the IQA was undertaken by the authoring agency, and six that were assessed by RIAT. We assessed 15 as meeting the QA criteria, 25 as partially meeting and 10 as not meeting the criteria. Overall, we assessed 20 RISs as lower than the IQA reviewer, 25 as the same and 4 higher (one RIS in the sample was not subject to IQA). There appears to be a trend of IQA reviewers marking more stringently over the last two years, with the proportion of partially and not meeting rising (note that this assumes that the samples in each year are fairly representative of RISs overall).

The proportion of RISs assessed by us as meeting the QA criteria is lower than the previous two evaluations, and the same as the 2010 review. The proportion we assessed as not meeting the criteria is higher than the previous two reviews but lower than the 2012 review. It is hard to read too much into this in itself, as the people undertaking the evaluations have changed over the years, so some of the variation may be due to different application of the standards, rather than changes in the underlying standard of RISs. However, it may suggest that the quality of RISs has not improved; and this may in turn suggest that it is time to try different methods of strengthening the quality of analysis.

We assessed 50% of RISs the same as the IQA reviewers, which is a slightly lower proportion as in the 2013 evaluation, and higher than the previous two evaluations. This could indicate some convergence of IQA standards. Taken together with the above results, it could suggest that IQA reviewers are becoming more adept and rigorous at applying the standards.

We identified examples of good practice relating to the following dimensions:

- effectively describing the status quo and the problem;
- using and presenting data, including estimating the impacts in the absence of complete data;
- convincing presentation of options and impact analysis;
- discussing the arrangements for monitoring, review and evaluation;

- clearly explaining a technical issue; and
- appropriately distinguishing between the Cabinet paper and the RIS.

We found that common errors generally fell into two categories: issues with the analysis which are fundamentally about the quality of policy analysis, and more procedural issues relating to the way in which analysis was summarised and presented in the RIS. Some of these mirrored the examples of good practice.

- Issues with the quality of policy analysis:
  - unclear problem definition, that did not identify the root cause of the problem;
  - distinguishing the marginal impacts of options; and
  - misleading use of multi-criteria analysis.
- Presentation of analysis:
  - lack of substantiation/evidence;
  - insufficient discussion of issues raised in consultation;
  - lack of attention to monitoring arrangements;
  - ineffective use of tables; and
  - duplication with the Cabinet paper.

Our suggestions for improving the quality of RISs are as follows:

*That Treasury*

1. Promulgates examples of good practice, so that authoring agencies can better understand the RIA requirements and how to meet them;
2. Raises awareness of the definitions of market failure that are set out in the *RIA Handbook*, and provides refreshed guidance on how to diagnose the root cause of a problem;
3. Revises the guidance around the presentation of analysis of the status quo, and consider changing the terminology (to ‘counterfactual’) to be clearer and consistent with the *CBA Guide*; and
4. Provides guidance on appropriate use and presentation of multi-criteria analysis.

*That authoring agencies*

5. Continue to promulgate and promote the RIA guidance, particularly around problem definition and market failure;
6. Actively support analysts in undertaking more sophisticated root cause analysis and clearer identification of the marginal impacts of options; and
7. Consider fostering greater connectivity between policy teams and internal research and evaluation teams at the policy development stage, to ensure that arrangements for monitoring, review and evaluation are well specified and addressed in RISs.

*That IQA reviewers (both in RLAT and in authoring agencies)*

8. Ensure that they are convinced that the problem definition goes beyond discussion of the symptoms, and that the market failure has been identified in all relevant instances.
9. Place greater emphasis on ensuring that the arrangements for monitoring, review and evaluation are adequately described, including the performance measures/indicators that will be used and how the necessary data will be collected;
10. Place greater emphasis on ensuring that the ‘consultation’ section of the RIS adequately explains the nature of any feedback received (both from affected stakeholders and government agencies that were consulted), and whether and how the analysis or proposal was amended as a result;
11. For RISs that are assessed as partially or not meeting the requirements, include in the IQA statement a brief explanation of why they did not meet and the relevant quality assurance criterion/criteria;
12. Ensure that the report includes sufficient detail and explanation for a lay reader, who may not have all the background to the issue that the author does. It may be useful to include people on IQA panels or as assessors who do not have a specific expertise in the relevant policy area.

# 1. Introduction

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## 1.1 Background – the RIA requirements

The purpose of Regulatory Impact Analysis (RIA) is to encourage ‘an evidence-based approach to policy development which helps ensure that all practical options for addressing the problem have been considered and the benefits of the preferred option not only exceed the costs, but will also deliver the highest level of net benefit.’<sup>1</sup>

Formal requirements for the quality of analysis accompanying regulatory proposals have been in place in New Zealand since the late 1990s. The RIA requirements apply to any policy initiative or review that:

- considers options that would involve creating, amending or repealing legislation (either primary legislation or disallowable instruments for the purposes of the Legislation Act 2012); and
- is expected to result in a paper being submitted to Cabinet for approval.

The Government’s expectations for RIA are set out in the CabGuide. While successive Cabinet decisions have amended the procedural requirements, the fundamental expectations for the quality of RIA and the summarisation of this in a Regulatory Impact Statement (RIS) have not changed substantively over this time. The current articulation of these expectations is that:

*The government expects that departments will not propose regulatory change without:*

- *clearly identifying the policy or operational problem it needs to address, and undertaking regulatory impact analysis (RIA) to provide assurance that the case for the proposed change is robust; and*
- *careful implementation planning, including ensuring that implementation needs inform policy, and providing for appropriate review arrangements.*<sup>2</sup>

Guidance to departments undertaking RIA is provided by Treasury in the form of the *Regulatory Impact Analysis Handbook*.<sup>3</sup> An overview of the required elements of a RIS is set out in Appendix 1.

## 1.2 Independent quality assurance of RISs

Independent quality assurance (IQA) must be undertaken on all RISs. Most IQA is undertaken by the authoring agency, by a person or group (such as a review panel) that has not been directly involved in the preparation of the RIS. For proposals likely to entail significant impacts or risks, then the IQA is undertaken by the Regulatory Impact Analysis

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<sup>1</sup> CabGuide: <http://cabguide.cabinetoffice.govt.nz/procedures/regulatory-impact-analysis>

<sup>2</sup> CabGuide: <http://cabguide.cabinetoffice.govt.nz/procedures/regulatory-impact-analysis>

<sup>3</sup> Treasury (2013) *Regulatory Impact Analysis Handbook* (Treasury: Wellington, New Zealand).

Team (RIAT) in Treasury. Prior to 2009, responsibility for the IQA of significant RISs sat with the then Ministry of Economic Development (MED), and previously with its predecessor agency, the Ministry of Commerce.

The quality assurance (QA) criteria are:

- **complete** – the RIS contains all the required information;
- **convincing** – the level and type of analysis, and the robustness of evidence presented, is commensurate with the size and complexity of the problem and the magnitude of impacts and risks of the options;
- **consulted** – the RIS provides evidence of efficient and effective consultation with all relevant stakeholders, key affected parties, government agencies and relevant experts; and
- **clear and concise** – the material presented is succinct, in plain English, and sufficiently clear so that decision makers can understand the issues and trade-offs associated with the choices they are making and the general public can understand the basis on which government decisions have been taken.

RISs are assessed as ‘meeting’, ‘partially meeting’ or ‘not meeting’ the QA criteria. A statement on the quality of the analysis is prepared by the reviewer for inclusion in the ‘Regulatory Impact Analysis’ section of the Cabinet paper. This statement will include comment on any issues that have been identified in relation to the dimensions of quality specified in the QA criteria.

### 1.3 Context – previous evaluations

A number of reviews of the quality of RIA have been undertaken over the last twenty years. Most recently, a series of external evaluations have been commissioned by Treasury. Reviews in 2008, 2009, 2011, 2012 and 2013 assessed a sample of RIS and their IQA statements against the QA criteria. And in 2014 a detailed review of the options analysis presented in a sample of RISs was undertaken.<sup>4</sup> The 2013 review found that the quality of RISs had improved over the last five years, and that the quality standards as assessed by the agencies were converging with those of the independent reviewers, with the external reviewer more likely to agree with the QA assessment provided by the agency (or RIAT).

### 1.4 Purpose of this evaluation

We were commissioned by Treasury to provide an independent evaluation of the quality of RISs and agencies’ and RIAT’s IQA assessments for a sample of 50 RISs selected by Treasury. The objectives of this evaluation were to:

- help agencies to improve the quality of their RIA and how this is presented in the RISs they produce, specifically through providing:
  - examples of good practice and common errors;

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<sup>4</sup> These reviews are available at: <http://www.treasury.govt.nz/publications/guidance/regulatory/riareview>

- suggestions for ways to improve the quality of analysis or of its presentation;
- suggestions for any additional analysis that would improve RIS quality
- help RIAT improve the assistance and guidance it gives to agencies; and
- inform Ministers, Chief Executives and others about the performance of agencies generally in delivering this element of the RIA requirements.

## 2. Approach and methodology

This section outlines our approach and methodology for the evaluation.

### 2.1 Overall approach

Our overall approach is summarised in the following diagram.

**Figure 1 Project process**



## 2.2 Evaluation of Regulatory Impact Statements

We were provided with a sample of 50 RISs and their accompanying Cabinet papers by RIAT.

We evaluated each RIS against the QA criteria, using the template in Appendix 2. Mindful of the need to evaluate in an independent way, we focused on the nature and quality of the analysis rather than features of the proposal i.e. we did not seek to take a view on the merits of any policy options.

In undertaking the evaluations, we took into consideration information contained in additional supporting material (such as references cited in the RIS, and sometimes relevant earlier RISs relating to the same issue) where this was necessary to form a view on the quality of the RIS.

Of the four QA criteria, we weighted the ‘clear and concise’ criterion more lightly than the other criteria. We found that a high degree of judgement was involved in determining assessments both for each criterion and for the RIS as a whole. In many cases it was a ‘line call’ between categories. We sought to be consistent in our approach across the sample, and integrated feedback from authoring agencies in this regard. We also used an internal moderation approach where there was significant difference between our assessment and that of the IQA (see below under section 2.5).

## 2.3 Evaluation of IQA assessments

We then compared our evaluation of each RIS against that of the reviewer (whether RIAT or the authoring agency). This involved comparison with the reviewer’s IQA statement in the Cabinet paper.<sup>5</sup> Where our assessment differed from that of the reviewer, we summarised the key reasons for the difference if known (i.e. if it was stated in the IQA statement in the Cabinet paper).

In a number of cases, it was not clear why the reviewer thought the RIS did not fully meet the requirements. We suggest that, for RISs that are assessed as partially or not meeting the requirements, it would be helpful for the reviewer to include in their IQA statement a brief explanation of why it did not meet and the relevant quality assurance criterion/criteria.

## 2.4 Engagement with authoring agencies and RIAT

Draft evaluations were provided to the participating agencies for review prior to finalisation. Given the independent nature of our role, agencies were invited to concentrate on where they believe we may not have appropriately considered supporting information, such as the

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<sup>5</sup> Note that the documentation provided by Treasury did not include the agencies’ detailed QA assessments. We therefore compared our assessment to the IQA statement in the Cabinet paper.



Agency Disclosure Statement explaining the limitations on the RIS, or have demonstrated significant inconsistencies in our standards within a participating agency's sample.

We received feedback from seven agencies, covering 18 assessments. We made amendments to the draft evaluations when feedback from agencies revealed new information or factual error on our part. In some cases, this included information on the IQA process (feedback that was given by the reviewer/review panel to the author and how this was addressed or not addressed in subsequent draft RISs).

## 2.5 Internal quality assurance and moderation

In order to ensure that our assessments were internally consistent across the entire sample of RISs, we undertook the following process for internal QA and moderation.

- The analysts each took responsibility for assessing a share of the RISs.
- They each reviewed an initial batch of three RISs, and then compared their assessments of both the RIS and the QA statement to check they were making consistent judgements across the QA criteria. This sample was provided to RIAT and their feedback noted for finalising the sample assessments and undertaking the remaining evaluations.
- For the remainder of the sample, the analysts provided QA on each other's assessments.
- Where a significant difference of view arose – in particular where our assessment differed significantly from that of the IQA reviewer, the draft assessment was reviewed by the Project Director, who performed a moderation role.
- The Project Director also provided quality assurance of this report.

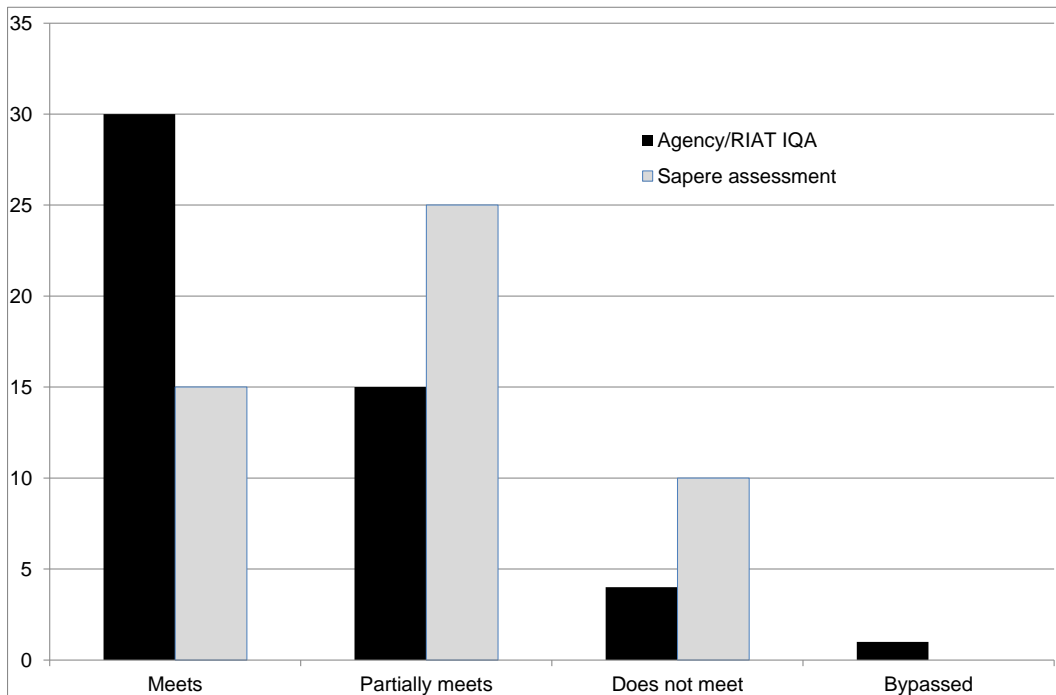
## 3. Results

### 3.1 Our assessments and comparison with IQA assessments

We assessed 44 RISs for which the IQA was undertaken by the authoring agency, and six that were assessed by RIAT. We assessed 15 as meeting the QA criteria, 25 as partially meeting and 10 as not meeting the criteria. Figure 2 shows our overall assessments compared to those of the IQA reviewers, and Table 1 breaks these figures down by IQA agency.

**Figure 2 Overall assessments of RISs**

Number of RISs



**Note:** ‘bypassed’ refers to a Cabinet paper for which a RIS was prepared but no IQA undertaken.

**Table 1 Comparison of Sapere assessments with IQA**

|                   |    |    |   |
|-------------------|----|----|---|
|                   |    |    |   |
| Agency assessment | 29 | 12 | 2 |
| Sapere assessment | 15 | 22 | 7 |
|                   |    |    |   |
| RIAT assessment   | 1  | 3  | 2 |
| Sapere assessment | 0  | 3  | 3 |

Overall, we assessed 20 RISs as lower than the IQA reviewer, 25 as the same and 4 as higher (one RIS in the sample was not subject to IQA).

**Figure 3 Comparison of individual Sapere assessments with IQAs**

Number of RISs

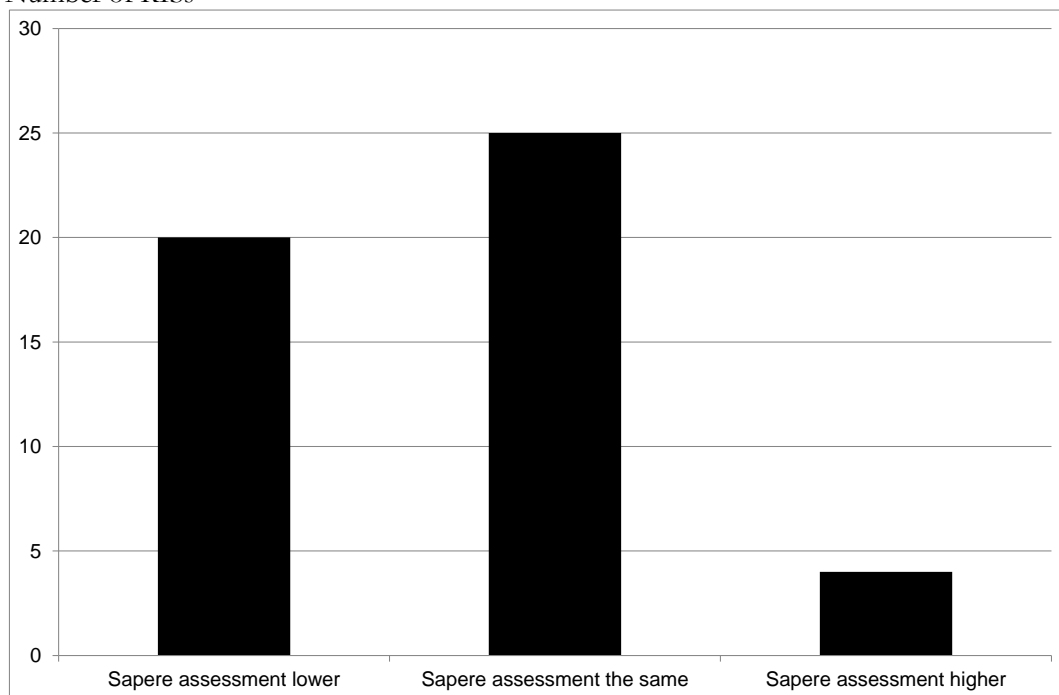
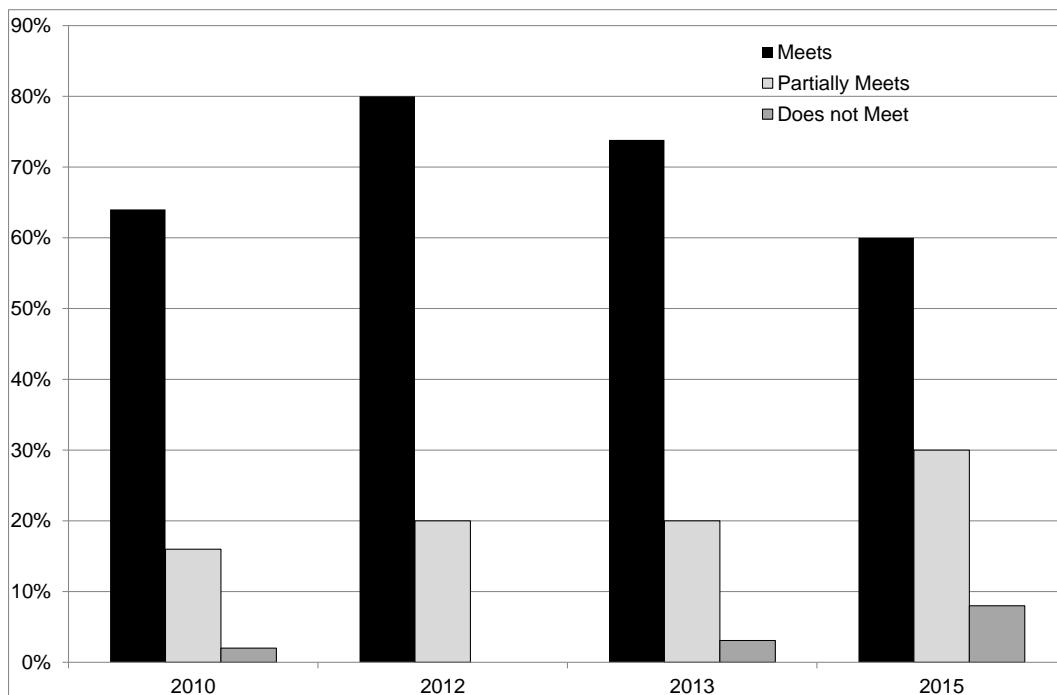


Figure 4 shows how the IQA assessments in our sample compare with previous years. There appears to be a trend of IQA reviewers marking more stringently over the last two years, with the proportion of partially and not meeting rising.

**Figure 4 Comparison of agency IQAs with previous years**

Proportion of RIS sample



### 3.2 Comparison with previous evaluations

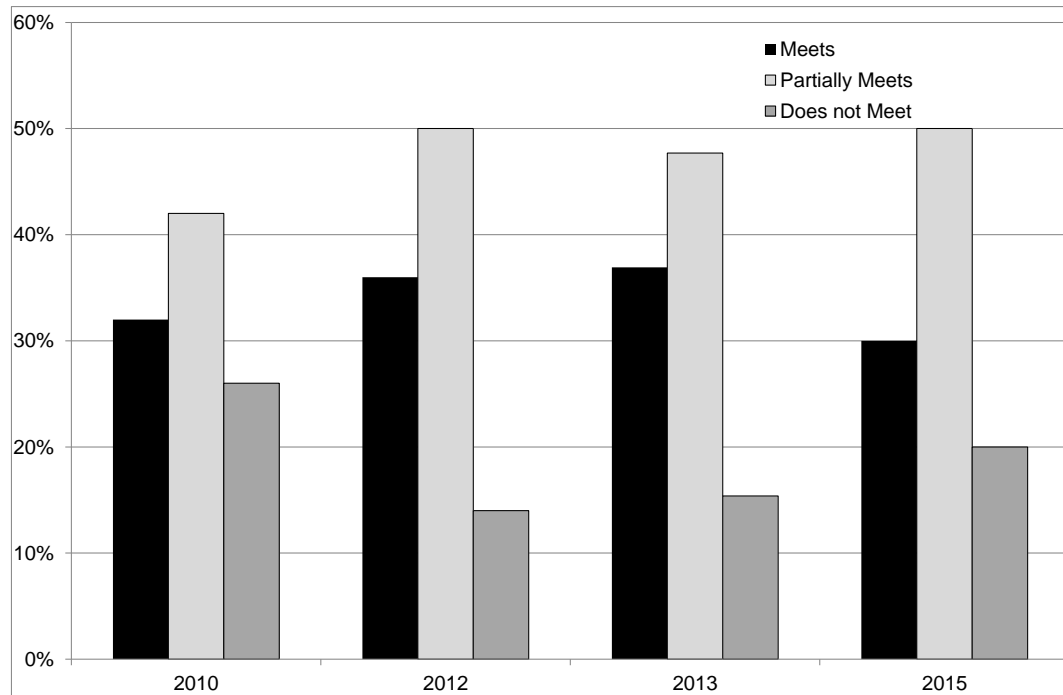
The following chart shows how our assessments compare with those of external evaluations from previous years (see Figure 5). The proportion of RISs assessed by us as meeting the QA criteria is lower than the previous two evaluations, and similar to the 2010 review. The proportion we assessed as not meeting the criteria is higher than the previous two reviews but lower than the 2012 review. It is hard to read too much into this in itself, as the people undertaking the evaluations have changed over the years, so some of the variation may be due to different application of the standards, rather than changes in the underlying standard of RISs. However, it may suggest that the quality of RISs has not improved; and this may in turn suggest that it is time to try different methods of strengthening the quality of analysis.

Figure 6 compares our assessments of individual RISs against that of the IQA assessments. We assessed 50% of RISs the same as the IQA reviewers, which is a slightly lower proportion as in the 2013 evaluation (52%), and higher than the previous two evaluations. This could indicate some convergence of IQA standards. Taken together with the above

results, it could suggest that IQA reviewers are becoming more adept and rigorous at applying the standards.

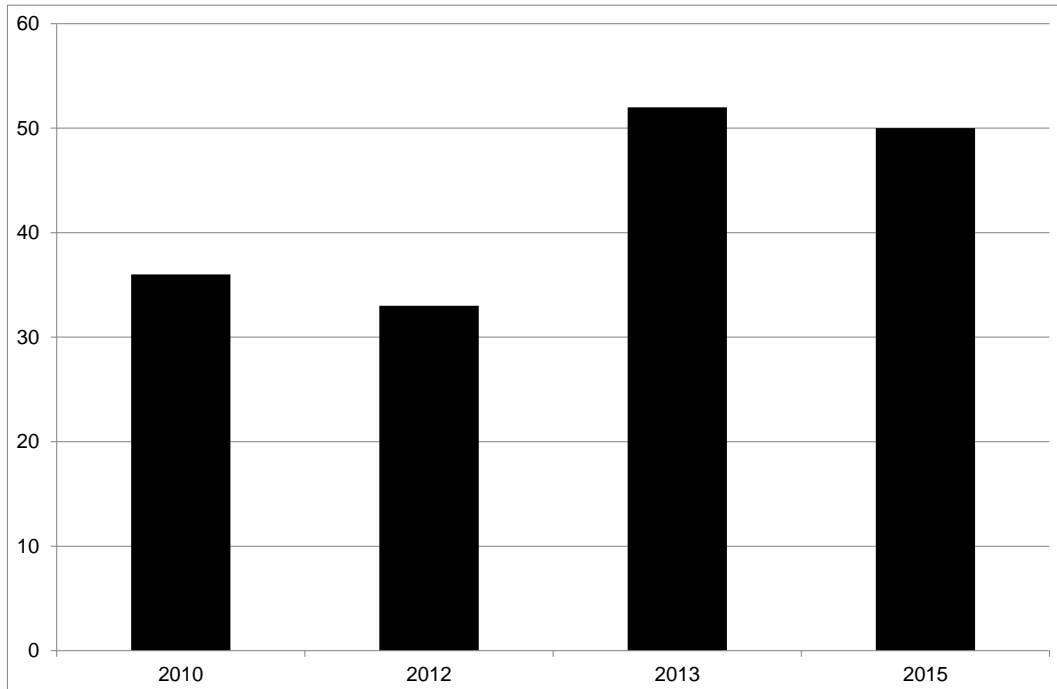
**Figure 5 Comparison of external assessments with previous years**

Proportion of RIS sample



**Figure 6 Proportion of RISs assessed as same as IQA**

Proportion of RIS samples



## 4. Examples of good practice

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### 4.1 Introduction

In this section, we provide examples from our RIS sample of aspects that we found to be particularly effective. Where these RISs have been published, we have provided the URL so the RIS can be viewed in its entirety. Where practical, we have presented some extracts.

### 4.2 Effectively describing the status quo and problem

We found the description of the status quo and problem in the Ministry of Transport's RIS on *Remotely piloted aircraft systems*<sup>6</sup> to be comprehensive, clear and well evidenced. This RIS provided a good discussion of the sector and the emerging issues and challenges with addressing the safety risks posed by remotely piloted aircraft systems (RPAS). The RIS explained:

- the types of operations currently using RPAS;
- the features of the RPAS market;
- trends in the market and use of RPAS, and the implications and challenges for aviation and operational safety;
- the current New Zealand regulatory system;
- international regulatory responses to RPAS; and
- why the current New Zealand regulation is not fit-for-purpose, in light of these technological and market trends.

In our view, the RIS made good use of the available data and it footnoted sources, providing transparency and substantiation.

We thought that the RIS on *East Coast Forestry Project: changes to administration*<sup>7</sup> prepared by the Ministry for Primary Industries was another example of a concise and well supported explanation of the problems with the project (a grants scheme). The RIS succinctly described:

- the problem the scheme was designed to address (hill country erosion on the East Coast);
- relevant context (Deed of Settlement with local iwi and decisions that have already been taken in relation to the scheme);
- the current administrative arrangements of the scheme;

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<sup>6</sup> <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-transport-rpa-jul15.pdf>

<sup>7</sup> <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mpi-ccfp-jul14.pdf>

- progress to date under the scheme;
- the reasons underlying problems with the scheme (low uptake); and
- the impact of these problems.

## 4.3 Using and presenting data

### 4.3.1 Using data effectively

The Ministry of Transport's RIS on *Mandating electronic stability control*<sup>8</sup> is a good example of using data to explain the current situation and assess the impacts of the options. The RIS used the available statistics to outline the trends in the vehicle fleet and in accidents caused by loss of control, and drew on overseas studies to describe the effectiveness of electronic stability control in reducing accidents. It used qualitative evidence to help describe relevant market trends. Sources were appropriately referenced and footnoted.

### 4.3.2 Estimating impacts in the absence of complete data

We thought that the Ministry for Primary Industries' RIS on *Regulations to eliminate shark finning in New Zealand fisheries*<sup>9</sup> did a particularly good job of identifying the range of impacts and quantifying them as well as possible, drawing on proxies, qualitative evidence and assumptions where figures are unavailable, and placing appropriate caveats on the resulting estimates. An extracts from the impact analysis is provided below.

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<sup>8</sup> <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-transport-mesc-jul15.pdf>

<sup>9</sup> <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mpi-resf-aug14.pdf>



Figure 7 Extract - estimating impacts in the absence of complete data

| Species grouping          | Option 4: Combination of ratio and fins attached (Preferred)   | Option 5: Fins attached only   | Option 6: Ratio approach only   |
|---------------------------|--|--|---|
| Mako and porbeagle sharks | <b>Ratio:</b> Fishers in surface longline fisheries catching these species would likely retain those caught dead but release others alive, meaning a decrease in total landings. Almost all of these sharks are dead when caught in trawl fisheries. Landings in the dressed state would likely increase once fin-only landings are banned, leading to some increased value but likely not enough to off-set the loss of fin sales. Costs in lost gear have been estimated at \$100,000 for blue shark, but would likely be lower than this for mako and porbeagle given the lower volume of catches and the higher retention rates.   | Fishers would be unlikely to retain porbeagle or mako sharks, including the 26-32 tonnes respectively that are currently landed in a dressed state (i.e. not subject to finning). This would lead to foregone earnings estimated at \$83,000, assuming most or all catches would be discarded. Costs associated with releasing sharks alive (i.e. lost gear) would be higher under this option, since more sharks would be released. | See option 3.   |
| Blue shark                | <b>Fins attached:</b> Fishers would be unlikely to retain many blue sharks under a fins attached option, with estimated foregone utilisation of around \$400,000 per annum. Additional costs of around \$100,000 per year are estimated for releasing sharks alive (through loss of gear e.g. hooks). Fishers discarding dead sharks would be required to pay annual catch entitlements for an estimated 100-150 tonnes of dead sharks that would be discarded each year. Whereas existing purchases of catch entitlements are off-set by sales, there would be no off-set under this scenario, but the current price for annual catch entitlements averages around \$50 per tonne for reported transactions, meaning this is a negligible cost. |  | Under a ratio approach, existing utilisation of blue shark could continue i.e. the small quantity of dressed landings would not be substantially affected. In 2012-13, around 60 tonnes of dressed landings were made, for an estimated value of \$34,200 based on port prices. This could represent a significant component of total income for the small number of operators making such landings. There would also be opportunities for dressed landings to expand in the future if markets are identified. Costs associated with releasing sharks alive would still be a factor since most sharks that are currently finned would now be returned to the sea. |

## 4.4 Convincing presentation of options and impact analysis

The Ministry of Transport’s RIS on *Mandating electronic stability control* presented an effective distinction between options and impact analysis. It was also one of the few RISs we reviewed that included a cost benefit analysis (CBA) and estimation of the likely net benefit of the options considered. Extracts from the analysis are presented below – with the options analysis summarising the contribution of options to the stated objectives, and the impact analysis summarising the CBA of alternative implementation dates.

Figure 8 Extract - presentation of options and impact analysis

Options analysis

|  | Take no action   | Mandate ESC   | Promote ESC  |
|--|--|---|--|
| <b>Maximise the safety benefits of ESC</b>                         | No – vehicles without ESC will continue to be imported | Yes – if timed so that enough used vehicles are available | No – the market is not strongly demand-led, so vehicles without ESC will continue to be imported (the NZTA has already heavily promoted ESC) |
| <b>Minimise any disruption to the supply and trade of vehicles</b> | Yes  | Yes – if timed appropriately                              | Probably – depending on response to demand   |
| <b>Minimise compliance &amp; administration costs</b>              | Yes  | Yes – if timed appropriately                              | No – increases government costs; subsidises compliance (free promotion of vehicles)  |

Impact analysis

| Implementation dates  | All new light vehicles: 2015<br>All used light vehicles: 2018 | All new light vehicles: 2015<br>All used light vehicles: 2019 | All new light vehicles: 2015<br>All used light vehicles: 2020 | All new light vehicles: 2015<br>All used light vehicles: 2021 | All new light vehicles: 2015<br>All used light vehicles: 2022 |
|---|---|---|---|---|---|
| <b>Estimated policy benefits (reduced crash costs)</b>                                | \$168 million   | \$123 million   | \$90 million  | \$66 million  | \$49 million  |
| <b>Estimated policy costs (availability or price)</b>                                 | \$90 million  | \$54 million  | \$36 million  | \$27 million  | \$21 million  |
| <b>Estimated net policy benefit (20 year net present value)</b>                       | <b>\$78 million</b>   | <b>\$69 million</b>   | <b>\$54 million</b>   | <b>\$39 million</b>   | <b>\$28 million</b>   |
| <b>Estimated benefit to cost ratio</b>  | 2.15  | 2.28  | 2.50  | 2.44  | 2.33  |
| <b>Estimated rate of ESC fitment to light vehicle fleet in 2025 (status quo: 64%)</b> | 68 percent  | 67 percent  | 66 percent  | 65 percent  | 65 percent  |

Source: Ministry of Transport: Regulatory Impact Statement for *Mandating Electronic Stability Control*

We thought the analysis in the Ministry of Business, Innovation and Employment’s RIS on *Modernising parental leave*<sup>10</sup> was another example of thorough, well presented analysis. The RIS included a table that summarised each option against the objectives/assessment criteria and also sought to assess the net impact. An extract from this table is included on the following page.

The Ministry for the Environment’s RIS on *Policy decisions for an EEZ Amendment Bill 2015*<sup>11</sup> provided a table for each set of options summarising the analysis for each options. We found this a clear way of presenting the analysis as it enabled comparison of high-level impacts across options.

**Figure 9 Extract - summary of options analysis**

| Option analysis - Rulings   |   |   |
|---|---|---|
| Options   | Impacts   | Net impact and assessment against objectives  |
| a) Amend the EEZ Act to clarify the intent of the rulings provisions in s162                              | <p><b>Benefits</b></p> <ul style="list-style-type: none"> <li>• Would provide greater certainty to the EPA and existing operators transitioning into the EEZ Act regime, while continuing to ensure adequate consideration of any adverse effects on the environment and existing interests</li> <li>• Ensures that the process and scrutiny by decision-makers is proportionate to the environmental effects</li> <li>• Would formalise the current agreement between operators and the EPA</li> </ul> <p><b>Risks and opportunities</b></p> <ul style="list-style-type: none"> <li>• Given the already agreed rulings process, amendment to this section of the EEZ Act would provide only minor material gain, and runs a small risk of increasing rather than reducing uncertainty about implementation.</li> </ul> | <p>Slightly better than status quo.</p> <p>The EPA and existing operators are establishing a clear process for rulings. In addition, the frequency of rulings requested and their costs are relatively low.</p> <p>The rulings process as currently being implemented provides appropriate regulatory oversight of existing operator’s activities at a cost that is proportionate to the effects of the activities.</p> <p>Although there would be little material change at an operational level, this option would provide greater certainty to existing operators that rulings are not required for activities that have no adverse effect on the environment.</p> |
| b) Amend the EEZ Act to remove the requirement for rulings for activities that have minor adverse effects | <p><b>Benefits</b></p> <ul style="list-style-type: none"> <li>• Would reduce the costs for existing operators associated with their ongoing activities while they are transitioning into the EEZ Act regime.</li> </ul> <p><b>Risks and opportunities</b></p> <ul style="list-style-type: none"> <li>• Creates a risk that regulatory oversight would be insufficient and would result in the effects of some activities on the environment or existing interests not being adequately avoided, remedied or mitigated.</li> </ul>   | <p>Worse than status quo.</p> <p>Removing this aspect of regulatory oversight of existing operators until they transition fully into the EEZ Act regime is not in line with the purpose of the Act.</p>   |

**Source:** Ministry for the Environment: Regulatory Impact Statement for *Policy decisions for an EEZ Amendment Bill 2015*

<sup>10</sup> <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mbie-mpl-aug15.pdf>

<sup>11</sup> <http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/exclusive-economic-zone>

## 4.5 Describing the arrangements for monitoring, review and evaluation

Description of the arrangements for monitoring, review and evaluation was done well by a handful of agencies. Particularly good examples, that outlined how success would be assessed (what measures/indicators would be used) and how this information would be collected, included the following RISs:

- *Regulations to eliminate shark finning* (Ministry for Primary Industries);
- *Modernising parental leave* (Ministry for Business, Innovation and Employment); and

## 4.6 Clearly explaining a technical issue

Sometimes RISs need to deal with a very technical issue, that entails concepts and jargon unfamiliar to a lay reader. One RIS that provided good explanation of technical terms was the Reserve Bank's RIS on *Exemptions from scope of Non Bank Deposit Taking Scheme*<sup>12</sup>. Another was Inland Revenue's RIS on *Bodies corporate GST obligations*<sup>13</sup>.

## 4.7 Appropriately distinguishing between the Cabinet paper and RIS

A few RISs provided an excellent distinction from the Cabinet paper. For example, the Ministry for Primary Industries' RIS on *Regulations to eliminate shark finning* included the analytical detail across the options, while the Cabinet paper focused on the preferred option and was therefore much shorter. The Ministry for the Environment's RIS on *Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 Amendment Bill*<sup>14</sup> was another example.

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<sup>12</sup> [http://www.rbnz.govt.nz/regulation\\_and\\_supervision/non-bank\\_deposit\\_takers/5778523.pdf](http://www.rbnz.govt.nz/regulation_and_supervision/non-bank_deposit_takers/5778523.pdf)

<sup>13</sup> <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-ird-bcg-feb15.pdf/view>

<sup>14</sup> <http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/exclusive-economic-zone>

## 5. Common errors

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### 5.1 Introduction

In this section, we discuss common ways in which the RISs in our sample fell short of meeting the requirements. These generally fell into two categories: issues with the quality of policy analysis, and more procedural issues relating to the way in which analysis was summarised and presented in the RIS. We discuss these two areas in turn.

### 5.2 The quality of policy analysis

#### 5.2.1 Unclear problem definition

A frequent issue we noticed in the sample of RISs was that the problem definition was either unclear or misstated. At the heart of this is that the problem is often defined in terms of its symptoms (i.e. the way in which it is manifested) rather than its root cause. The subsequent definition of objectives and analysis of options can be compromised if the foundational problem definition is not correct. In the following chapter we provide some advice for improving problem diagnosis.

#### 5.2.2 Distinguishing the marginal impacts

We sometimes identified a lack of clarity in the analysis; that is, it did not clearly distinguish the counterfactual (what would happen without further intervention, i.e. the status quo) from the factuals (i.e. the options for change), and hence the options were assessed not so much against what would happen in the absence of intervention, but against each other.

Consistent feedback we received from agencies was that they had followed the advice in the *RIA Handbook* for how to present analysis of the status quo. We agree that the guidance could be interpreted as suggesting that the status quo is an option to be assessed in the options and impact analysis (third paragraph of section 5 on page 2.6). We disagree with this advice, partly because of the lack of clarity it generates about how to assess the base case for analysis (and thus the marginal impacts of the options), and partly because it is resulting in tautological options analysis that almost inevitably leads to conclusions that the status quo does not meet the objectives. But given the confusion resulting from the guidance, we amended our assessments where agencies raised this as an issue, in order to not ‘downgrade’ RISs that had presented the status quo as an option.

We agree that the ‘do nothing’ option is usually a valid option that should be considered by decision-makers. However, in our view, the analysis of the costs and benefits of the counterfactual when assessed against the objectives belongs in the ‘status quo and problem definition’ section of the RIS, and the analysis of the marginal impacts of the alternative options (against the counterfactual), that is whether any of the options improve outcomes (better meet the objectives) relative to leaving things as they are, belongs in the ‘options and impact analysis’ section. It is important to note, because there appeared to be some confusion on this point also, that the counterfactual is not static (i.e. it is not necessarily the

current situation or outcomes) as other factors may change. The counterfactual is the outcome of the current policy settings over a realistic future horizon.

We suggest that the guidance is revised to provide correct and consistent advice on this matter. We also suggest that Treasury gives consideration to the terminology, perhaps aligning with the *CBA Guide* is its use of the term ‘counterfactual’ rather than ‘status quo’ (as status quo can imply that nothing different will happen in the future).

### 5.2.3 Misleading use of multi-criteria analysis

There was frequent use of multi-criteria analysis (MCA). Qualitative assessment of options in a MCA can be an appropriate methodology, particularly in the absence of quantitative data. However a couple of RISs went so far as to ‘sum up’ the qualitative assessments across objectives/criteria, providing numerical ‘scores’ for each option. The problem with this is that there is no consistent numeraire in such analyses (i.e. they are in different ‘units’), meaning that adding up different categories is like adding apples and oranges. In our view this can result in spurious quantification that could be misleading to decision-makers. Our advice on improving the use of MCA is provided in 6.4.

## 5.3 Presentation of the analysis

### 5.3.1 Lack of substantiation/evidence

In comparison to some RISs that provided evidence and citations to support the analysis, other RISs lacked substantiation of statements or the basis for judgements made. Examples included:

- not identifying the scope or scale of an issue or effect (unsupported anecdote or judgement); and
- treating assertions as facts without explanation/justification.

### 5.3.2 Insufficient discussion of consultation

The RIA consultation requirements state that the RIS needs to:

1. explain who has been consulted and what form the consultation took;
2. outline key feedback received, with particular emphasis on any significant concerns that were raised about the preferred option, how the proposal has been altered to address these concerns (and if not, why not); and
3. if there was limited or no consultation undertaken, the reasons why.<sup>15</sup>

Many RISs in the sample covered points (1) and (3) but did not address (2). It was therefore sometimes unclear what purpose the consultation served and whether the process met the requirement of effective consultation.

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<sup>15</sup> *RIA Handbook* section 4.9.

### 5.3.3 Lack of attention to monitoring arrangements

A frequent gap in the RISs we assessed was adequate explanation of how the preferred option would be monitored, reviewed and evaluated. The *RLA Handbook* explains that this section needs to:

- outline plans for monitoring and evaluating the effectiveness of the preferred option, including performance indicators and how the necessary data will be collected; and
- explain how it will be reviewed and what the review process will involve (and if no plans for review, the reasons why).<sup>16</sup>

Particular omissions were:

- describing what success would look like, and the measures/indicators that would be used to assess this;
- where risks were identified in the analysis, how these risks would be monitored over time; and
- the arrangements for data collection.

Some RISs referred to ‘routine monitoring’, but did not explain what this entailed. A risk of this lack of specificity in monitoring arrangements is that it is not transparent how the option’s success or otherwise will be assessed (i.e. how we will know whether it has been effective in addressing the identified problem and achieving the objectives, and/or how it will be determined whether policy settings need adjusting in the future).

### 5.3.4 Ineffective use of tables

We encountered widespread use of tables to present options and impact analysis. While in principle tables can be helpful, in order to be effective we think they need to be succinct (using minimal text) and ideally fit onto a single page so that the options can be easily compared against each other. Several RISs we reviewed included tables that were very text heavy (in some cases replicating the body text), and sometimes extended over several pages, which in our view counteracted the intention to help clearly and concisely summarise information. RISs that used tables well had a minimum of text, and sometimes used symbols (e.g. ticks and crosses) supplemented with a brief explanation. It is preferable in our view if tables do not contain abbreviations or symbols that require reference to some other part of the document (such as a letter to refer to an objective). We suggest that specific abbreviations are avoided or clarified in a note to the table itself.

### 5.3.5 Duplication with the Cabinet paper

A number of RISs we assessed seemed to struggle with the distinction between the RIS and the Cabinet paper, occasionally being almost exact replicas of the Cabinet paper and thereby adding no additional value. Sometimes there was greater analytical detail or useful facts in the Cabinet paper that in our view would have belonged more appropriately in the RIS. It is possible that the risk of duplication is higher when the RIS is prepared at the last minute, at

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<sup>16</sup> *RLA Handbook*, section 4.10.

the same time as the Cabinet paper, rather than being developed progressively during the policy process.

The *RLA Handbook* explains that '[w]hile the RIS is a document produced by an agency summarising its analysis of an identified problem, the associated Cabinet paper is usually written from the perspective of a Minister'.<sup>17</sup> This distinction is particularly important when the agency's preferred option is different from that recommended in the Cabinet paper.

As mentioned in section 4.7, some RISs were able to deal with this distinction very effectively, by presenting the detailed analysis of all options considered in the RIS, and leaving the Cabinet paper to focus on the Minister's preferred option.

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<sup>17</sup> *RLA Handbook*, section 4.6.



## 6. Suggestions for improving quality

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### 6.1 Introduction

This section provides our suggestions for ways in which the quality of RIA and RISs could be improved. We have made recommendations for Treasury, authoring agencies and IQA reviewers.

We would like to note that in several cases the authoring agency provided additional information in response to our assessment that we consider would have added value to the RIS. It may be useful to ensure that IQA panels or assessors include people who do not have a specific expertise in the policy area and therefore are able to consider whether sufficient detail and explanation is provided for a lay reader, who may not have all the background to the issue that the author does. If this is not possible, the reviewer should ensure they consider the report from the perspective of a lay reader.

### 6.2 Examples of good practice

In our view, possibly the single most effective thing that could be done to help improve the quality of RISs is promulgating examples of good practice. We are consistently asked about this when we run RIA training for agencies, but it is difficult to find good examples independently (the IQA statement is not accessible for the general public unless the accompanying Cabinet paper is released). This evaluation gave us the opportunity to review a large number of RISs, so we were able to identify some examples – but there will be others as well that were not in our sample (indeed we looked at some others in the course of developing our assessments and noted some very good RISs that were outside our scope).

We acknowledge that providing examples poses the risk that agencies simply mimic these examples rather than applying the concepts in a tailored way, but in our view this risk would be outweighed by the benefits of improved understanding of the features of good regulatory analysis.

### 6.3 Clearer problem diagnosis

The *RIA Handbook* provides guidance on how to identify and diagnose the root cause of the problem.<sup>18</sup> Broad categories are:

1. market failure;
2. regulatory failure;
3. unacceptable hazard or risks; and
4. social goals/equity issues.

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<sup>18</sup> *RIA Handbook* sections 2.3-2.4.

Our advice is to consider the problem definition in two tiers:

- **Tier 1: ‘first principles’ problem definition.** Primary problem diagnosis focussing on identifying the underlying market failure which current policy settings do not address. In some cases the overarching driver for intervention may be to address issues in categories (3) or (4), but for many RISs we assessed it was possible to identify an underlying market failure.
- **Tier 2: secondary problem definition where regulation or other policy interventions are already in place;** there can be two types of problems here:
  - Sometimes legislation becomes out of date (e.g. due to technological change) or for instance has been found to be poorly worded, and is therefore not achieving its original objectives. The underlying problem still exists, but regulation needs to be amended in order to keep achieving its original objectives.
  - Regulation can also generate subsequent problems, such as institutional failure relating to regulatory enforcement practices, or perverse incentives (unintended effects), that need to be addressed. In such cases the problem definition for the RIS may be regulatory failure, but there would still likely have been some market failure underlying the intervention in the first place. In these situations, it is useful for the RIS to explain the underlying problem definition (the original rationale for regulation), and then explain that the current problem addressed in the RIS is regulatory failure.

The *RLA Handbook* summarises the following forms of market failure:

- imperfect competition;
- information problems;
- externalities;
- public and mixed goods; and
- lack of clear property rights.

We suggest that it would be helpful for Treasury to raise awareness of these definitions; and to provide refreshed guidance on this matter. Several different examples of each type of problem would be particularly useful, including examples of problems that genuinely fall into categories (3) and (4). Agencies could assist by promulgating the guidance and supporting analysts to undertake more sophisticated root cause analysis. IQA reviewers could ensure that they are convinced that the problem definition goes beyond discussion of the symptoms, and that the market failure has been identified in all relevant instances.

## 6.4 Guidance on appropriate use of multi-criteria analysis

We also suggest that it would be helpful for Treasury to provide guidance on appropriate use of MCA. Our advice is that qualitative MCA should stop short of quantifying and summing across categories. The main reason for our view is that the impacts are of incompatible dimensions. We also note though that MCA is relatively subjective and there are risks of bias relating to both the selection of impacts to be assessed and the assessment of those impacts. This weakness is exacerbated by attempts to assign some sort of value to the impacts.

In our view, the analysis of each option should instead conclude with an overall ‘on balance’ qualitative assessment. Where assessment criteria or objectives have been weighted, this weighting should be made explicit (i.e. the RIS should state which criteria have been weighted more heavily) but not assigned numerical values.

An example of what we consider to be appropriate use and presentation of qualitative analysis was in the Department of Internal Affairs’ RIS on *Charitable and tax status of community housing providers*. Another example is a RIS not in our sample, but which we looked at in the course of doing our assessments. Prepared by Inland Revenue in 2011, it assesses options for reforming child support.<sup>19</sup> It includes tables that summarise qualitative assessments against the objectives, and then provide an overall recommendation for each option.

We note there are different schools of thought on this matter, and that our view does not align with the advice provided in the Treasury’s *CBA Guide*. If Treasury remains of the view that quantification of MCA should be encouraged, our advice is to make this very transparent (i.e. spell out each step) to enable the reader to consider the implications of a variation in opinion.

## 6.5 Better description of the consultation process and outcomes

Building on our points in section 5.3.2, we suggest that description of consultation needs increased focus on:

- the nature of feedback received;
- how this feedback was considered and addressed, e.g. if concerns were raised, whether and how the proposals were adjusted as a result; and if new information was provided, how this was incorporated into the analysis; and
- if no significant concerns were raised this should be stated.

This relates to feedback both from stakeholders/affected parties and government agencies that were consulted. We think the requirements are clear in the guidance, and suggest this could be addressed through greater emphasis on this by reviewers in the IQA process.

## 6.6 Increased focus on monitoring framework

In a similar vein, we consider that the *RIA Handbook* is clear on what the ‘monitoring, review and evaluation’ section should contain and that perhaps IQA reviewers could give this area more consideration when assessing the completeness of RISs. Greater connectivity between policy teams and internal research and evaluation teams at the policy development stage may also assist.

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<sup>19</sup> <http://taxpolicy.ird.govt.nz/publications/2011-ris-child-support/overview>

# Appendix 1: Summary of required information in a RIS

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## Regulatory Impact Statement

Title of Proposal/Name of Issue

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by [name of agency].

It provides an analysis of options to [state in one sentence what problem the options in this paper seek to address].

[Paragraphs describing the nature and extent of the analysis undertaken, explicitly noting:

- key gaps
- assumptions
- dependencies
- any significant constraints, caveats or uncertainties concerning the analysis,
- any time constraints, including the nature and cause of the constraints, and
- any further work required before any policy decisions could be implemented.]

[Please note that the Agency Disclosure Statement should address the reliance that decision-makers may place on the analysis. It should not be an executive summary of the RIS.]

[Name and designation of person responsible for preparing the RIS]

[Signature of person]     [Date]

### Executive summary

A short outline of the RIS and key conclusions—preferably in less than one page.

### Status quo and problem definition

Describe the key features of the current situation, including any existing legislation/regulations or other government interventions/programmes, and features of the market, as relevant.

Explain any relevant decisions that have already been taken.

Describe the costs and benefits of status quo, ie, expected outcomes in the absence of any further government action.

Identify the root cause of the problem (not just the symptoms).

## Objectives

Explain the desired government outcomes/objectives against which the options are assessed, eg, the level of risk reduction to be achieved.

State whether there is an authoritative or statutory basis for undertaking the analysis, eg, a legislative requirement to annually review the regulation.

State whether the outcomes are subject to any constraints, eg, whether they must be achieved within a certain time period or budget.

## Options and impact analysis

Identify the full range of practical options (regulatory and non-regulatory) that may wholly or partly achieve the objectives. Within the regulatory options, this includes identifying the full (viable) range of regulatory responses.

For each feasible option:

- identify the full range of impacts (including economic, fiscal, compliance, social, environmental and cultural) and provide an appropriate level of quantification
- describe the incidence of these impacts (ie, who bears the costs and the benefits) and assess the net benefit compared with the status quo.

## Consultation

Explain who has been consulted and what form the consultation took.

Outline key feedback received, with particular emphasis on any significant concerns that were raised about the preferred option, how the proposal has been altered to address these concerns (and if not, why not).

If there was no limited or no consultation undertaken, the reasons why.

## Conclusions and recommendations

Summarise and present the outcome of the options analysis.

It is not mandatory for an agency to recommend or reject a particular option. But where an agency does so, it should explain and justify their recommendation in the RIS.

## Implementation plan

Summarise how the proposed option(s) will be given effect, including transitional arrangements.

Describe how implementation risks will be being mitigated.

Describe the steps that are being taken to minimise compliance costs.

Describe how the proposal would interact with, or impact on, existing regulation, including whether there is scope to reduce or remove any existing regulations.

Outline the enforcement strategy that will be implemented to ensure that the preferred option achieves its public policy objectives.

### **Monitoring, evaluation and review**

Outline plans for monitoring and evaluating the effectiveness of the preferred option, including performance indicators and how the necessary data will be collected.

Explain how it will be reviewed and what the review process will involve (and if no plans for review, the reasons why).

## Appendix 2: Assessment template

|   |  |
|---|--|
| <b>RIS title</b>                                |  |
| <b>Authoring agency</b>                         |  |
| <b>IQA agency</b>                               |  |
| <b>Summary of assessment</b>                    |  |
| <b>IQA assessment</b>                           |  |
| <b>Sapere overall assessment</b>                |  |
| Complete  |  |
| Convincing                                      |  |
| Clear and concise                               |  |
| Consulted                                       |  |
| <b>Complete</b>                                 |  |
|   |  |
| <b>Convincing</b>                               |  |
|   |  |
| <b>Clear and concise</b>                        |  |
|   |  |
| <b>Consulted</b>                                |  |
|   |  |
| <b>Overall opinion on quality of analysis</b>   |  |
|   |  |
| <b>IQA assessment</b>                           |  |
|   |  |
| <b>Comparison of Sapere assessment with IQA</b> |  |
| Sapere assessment same/similar                  |  |
| Sapere assessment significantly higher          |  |
| Sapere assessment significantly lower           |  |