Guidance Note

Discussion Documents and Cabinet's Impact Analysis Requirements

December | 2024

Ministry for Regulation
Te Manatū Waeture

Published in **December 2024** by the Ministry for Regulation, Wellington, New Zealand.

This document is available on the Ministry for Regulation website: regulation.govt.nz

Contents

Introduction

Consultation and engagement are important parts of the policy process. For advisors working on policy proposals, consultation informs the development of the policy and impact analysis, and advice to Ministers. Consultation plays an important role in supporting future Cabinet decisions and should be reflected in Regulatory Impact Statements (RIS).

While consultation and engagement can take various forms, formal public consultation is often supported by published written material, generally referred to as discussion documents (or consultation documents). There are different types of discussion documents, from early-stage issues papers through to documents that propose options for regulatory change.

Purpose

The purpose of this guidance is to support policymakers to understand how Cabinet's regulatory impact analysis (RIA) requirements apply to discussion documents, and to guide the development of discussion documents that fulfil these requirements. The guidance is structured in three parts:

- **Part A: Understanding the RIA process for discussion documents.** This section provides an overview of the Cabinet's requirements and explains how they apply to different types of discussion documents. It also outlines the new expectations around the consultation process and the quality assurance criteria for content of discussion documents.
- **Part B: Best practice consultation processes.** This section includes information on our international free trade agreement obligations and the Ministry for Regulation's recommendations on best practice consultation processes.
- **Part C: Writing effective discussion documents.** This section is for people who are preparing discussion documents; it explains what to include and how to frame consultation questions.

Notes on this version of the guidance

The Ministry for Regulation updates this guidance periodically, to reflect any changes to Cabinet's impact analysis requirements. This version reflects Cabinet decisions from November 2024 to streamline the requirements for discussion documents. These decisions means that agencies only need to consider during the quality assurance process whether the discussion document supports effective consultation and enables future impact analysis [CAB-23-MIN-0339, EXP-24-MIN-0061].

Prior to this decision, the previous Cabinet Office Circular required discussion documents to be assessed against similar criteria to that of a RIS. This was an unnecessarily high standard, particularly where the discussion document was part of a consultation process to support later impact analysis for Cabinet decisions.

The quality assurance standard has been amended so that if a discussion document does not exclude options from consideration, extensive impact analysis is not required. Instead, the assessment needs only to consider whether the discussion document enables effective consultation that will support later, higher-quality, impact analysis when final decisions are made. Under the new process, discussion documents will be assessed under a standard that is tailored to the circumstances. Quality assurance should consider the stage of policy development, the nature of the decision being sought and the level of analysis possible.

This change should simplify and streamline regulatory impact analysis and quality assurance processes, freeing up agency resources without major risk to discussion document quality. Consequently, discussion documents should be easier to produce and fit for purpose.

Part A: Understanding the RIA process for discussion documents

Cabinet's impact analysis circular [CO (24) 7] requires impact analysis to be undertaken when Cabinet is considering:

- decisions to release discussion documents which include regulatory options, and
- "in principle" policy decisions and intermediate policy decisions, particularly those where regulatory options are narrowed down (e.g. limiting options for further work/consideration).

When do discussion documents trigger the RIA requirements?

Cabinet's RIA requirements only apply to discussion documents that include regulatory options and require Cabinet to approve their release for public consultation.

The RIA process captures some types of discussion documents to ensure there is sufficient analysis to support all options that Cabinet considers (some exceptions are below). Although the decision to release a discussion document is not in itself a regulatory decision, discussion documents can establish the scope of options that Cabinet will consider in future. Therefore, where Cabinet approves the release of a discussion document, they could be implicitly deciding the direction for future policy development.

In circumstances where the discussion document presents a narrowed scope of options, the release of the discussion document effectively constitutes an "in principle" policy decision, which could limit the range of options on which stakeholder/public feedback is likely and the scope for future work. (This, in turn, can limit the options that Cabinet will consider in the future). It is therefore critical to provide sufficient analysis to support Cabinet's decision to release these discussion documents.

There are also some situations where the RIA requirements are not triggered:

- Cabinet is not approving the release of the discussion document. This sometimes happens when the Minister authorises targeted consultation.
- Issues papers that seek stakeholder views on an issue or defining a problem, but do not include options to address the issue, are outside the RIA requirements. These documents are typically prepared at an early stage in the policy process and seek stakeholder views on whether there is a problem or issue to be addressed and, if so, what that might be. Issues papers are sometimes called 'green papers'.
- Sometimes a Working Group or Committee will conduct independent consultation. This process does not require Cabinet approval (see Annex Three: Working Groups and Committees).

More information about Cabinet's impact analysis requirements can be found in the RIA guidance on the Ministry for Regulation website.

Why do we consult?

Consultation is an important part of the RIA process for the following reasons:

- **To test officials' analysis and advice:** people who are going to be affected by regulation may have information and perspectives that differ from those within government.
- **To develop robust policy:** undertaking effective consultation during the policy development process generally results in better quality regulatory proposals that are more likely to achieve the objectives of the policy and are less likely to need amending after implementation.
- **Increased public buy-in and acceptance:** stakeholders are more likely to accept a proposal they have been involved in developing and are also more likely to comply due to better understanding of the policy.
- **New Zealand has statutory obligations to consult in some cases and there has also been an increase in our international obligations:** in addition to statutory obligations, New Zealand is bound by international legal obligations in trade agreements to undertake public consultation on proposed changes to a broad range of regulatory measures. This explained further in the following section.

The discussion document process

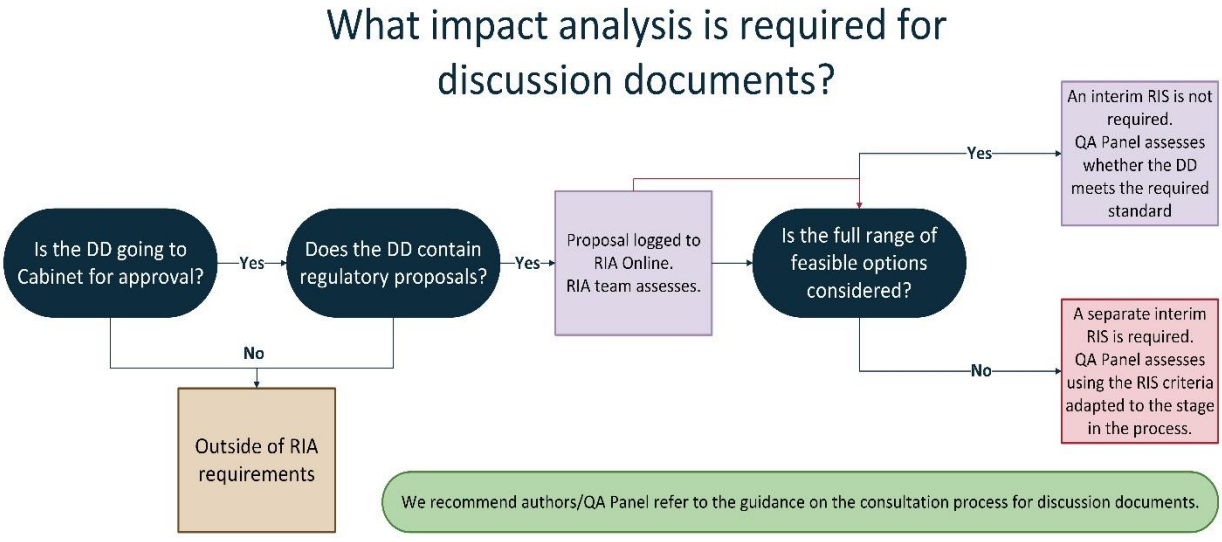

Figure 1: Flow chart for different types of discussion documents and associated impact analysis requirements

Proposals to release a government discussion document that includes regulatory options must be registered in RIA Online.[1]

The Ministry for Regulation's RIA team is responsible for administering Cabinet's impact analysis requirements. Once proposals are entered into RIA Online, the RIA team assesses whether the options have been narrowed, determines the appropriate process for the agency to follow, and advises on quality assurance (QA) arrangements. The RIA team confirms the process and provides the agency with the statement template for the Impact Analysis section of the Cabinet paper.

As shown in Figure 1 above, there are two possible pathways depending on whether the options in the discussion document have been narrowed:

1. **The options are not narrowed and there is a full range of feasible options considered**. The content of the discussion document is reviewed by the agency's quality assurance panel (or QA expert) against the QA criteria and is approved by the panel or expert if it meets the standard.
2. **The options are narrowed**. A separate interim RIS is required covering the full range of feasible options or else the impact analysis requirements will not be met. The interim RIS must reviewed by the panel (or QA expert). Although the panel should be provided with a copy of the discussion document for context, formal review of the discussion document itself is generally not required. Authors can request panels to review both the discussion document and the interim RIS.

What does it mean to narrow the options?

It is not always straightforward to determine whether the options under consideration have been narrowed. It depends on the nature of the problem and how widely it is defined, and is ultimately a matter of judgement.

The clearest case of narrowed options is when a discussion document is seeking feedback on only one proposed regulatory approach (i.e. there are no alternative options considered, and other options may even be explicitly excluded).

Another case of narrowed options is where only a small range of feasible options is considered in the discussion document, when there are clearly other feasible options not considered.

There is often a large number of feasible options to address any given problem. It is not necessary to consider them all – an indicative range of feasible options is sufficient. It can also be helpful to note any other options you have identified but not considered in further detail and/or excluded from further consideration.

[1] If an agency has difficulty accessing RIA Online, or has questions about the process for discussion documents, they should contact the Ministry for Regulation's RIA team (RIA.Team@regulation.govt.nz).

There may be some rare situations where it is less clear and the options are "implicitly" narrowed (i.e. the document explores a subset of regulatory options without committing to a particular pathway and without ruling out other options). In this situation, a separate interim RIS is generally required cover the full range of feasible options[2] unless the responsible Minister certifies in the Cabinet paper that the discussion document is not intended to narrow the options under consideration and that all feasible options are still on the table. If that is the case, a recommendation needs to be included in the Cabinet paper noting that Ministerial certification has been provided. The discussion document can be reviewed by the agency's panel (or QA expert) and approved if it meets the standard. In these cases, the agency needs to ensure the consultation questions are open ended, to encourage feedback on a broad range of options.

Confirming the RIA requirements and conditions

Based on the information provided by the agency in RIA Online about the nature of the discussion document and whether the options have been narrowed, the RIA Team will confirm the RIA requirements and provide appropriate wording relating to the requirements for inclusion in the Impact Analysis section of the Cabinet paper.

The following section sets out the RIA requirements and conditions that apply in a range of scenarios depending on whether the discussion document contains a broad range of feasible options or is narrowing the range of options (either explicitly or implicitly). A summary table of the main scenarios is attached as Annex Four.

The authoring agency should discuss with the RIA team any scenarios that fall outside those outlined below.

Scenarios for different types of discussion documents

Scenario 1: The document is an issues paper seeking stakeholder views on an issue or defining a problem, but does not include options to address the issue.

The document is outside the RIA requirements at this stage in the process because no solutions are being proposed and Cabinet is not being asked to make an in-principle decision. The authoring agency should confirm with the RIA Team that the document is considered an issues paper.

Scenario 2: The discussion document is seeking stakeholder views on the full range of feasible options.

The document contains a full range of feasible options, interim analysis of those options and open-ended consultation questions, consistent with the quality assurance standard for discussion documents. All options are still under consideration when final decisions are made by Cabinet. The discussion document needs to be reviewed by the agency's panel (or

[2] The full range of feasible options includes all the options discussed in the discussion document as well as the excluded options.

QA expert). However, a separate interim RIS is not required to accompany the discussion document.

Scenario 3: The options are narrowed in the discussion document, but the Minister has certified that it is not intended to narrow the range of options under consideration.

The RIA requirements apply because the options are implicitly narrowed for future policy development (i.e. there is a small range of feasible options but the others are not explicitly ruled out). However, a separate RIS is not required if the responsible Minister certifies that the discussion document is not intended to narrow the options under consideration, and that all feasible options will be included in the RIS for consideration by Cabinet when final decisions are made. The following conditions apply:

- If Ministerial certification is provided, the front of the discussion document needs to clearly indicate that people are invited to submit alternative ideas and these will be considered. The discussion document should also contain open-ended consultation questions to facilitate this.
- A noting recommendation needs to be included in the Cabinet paper stating that the Minister has certified that the intention of the discussion document is not to narrow options, and that a full range of feasible options will be considered in future.

The discussion document must be reviewed by the agency's panel (or QA expert) and approved if it meets the quality assurance criteria. When regulatory options are brought to Cabinet for decision-making, a RIS will be required covering all options.

Scenario 4: The options in the discussion document are narrowed.

In this scenario, either the options are "explicitly" narrowed (i.e. there is one regulatory option or a small range of feasible options, and other options have been ruled out), or options have been implicitly narrowed and no Ministerial certification has been provided.

A separate interim RIS is required to meet the impact analysis requirements covering the full range of feasible options, including the narrow range of options in the discussion document.

The interim RIS would be reviewed by the agency's panel (or QA expert) against the RIS quality assurance criteria, taking into account the stage in the process, with the QA statement included in the Impact Analysis Section of the Cabinet paper. As part of the QA process, the panel should be provided a copy of the discussion document for context, but the discussion document itself is not required to be formally assessed (although the authoring agency may ask the panel to assess the discussion document alongside the interim RIS). The panel would then include a comment on the quality of the discussion document in the interim RIS QA statement.

Scenario 5: The discussion document includes a range of feasible options, but the agency chooses to prepare an interim RIS to accompany it.

In some cases, agencies may choose to prepare an interim RIS to accompany a discussion document which includes a range of feasible options. This can be useful where there is a lot of technical information in the RIS, and the agency wants to ensure the discussion document is reader friendly. The interim RIS would be assessed by the panel.

Scenario 6: The discussion document covers a large, complex reform with a full suite of analysis including some issues with no options, some full and some narrowed options.

Where there is a complex reform, the discussion document may contain a range of proposals with some more developed than others. It is likely that an interim RIS will be required if some options have been narrowed and/or there is technical material suited to a specialist audience that the agency does not wish to include in the discussion document. The agency should advise the RIA team that the discussion document forms part of a complex reform when lodging the proposal in RIA Online, and request a meeting early in the process to discuss the RIA requirements. An outline of the content of the discussion document should be provided and agreed with the RIA Team.

Undertaking quality assurance of a discussion document

The responsible agency should arrange for quality assurance of the discussion document to be undertaken by a panel, or person with expertise within the agency that is independent from the document's development and/or approval. The standard conditions of approval are that the content of the discussion document must meet the QA criteria (see below for a break-down of the criteria), and that the agency's panel (or QA expert) must verify that this is the case.

A statement from the panel (or QA expert) should be included in the "Impact Analysis" section of the Cabinet paper about whether the content of the discussion document contains sufficient initial impact analysis (recognising the early stage in the policy process) to meet the quality assurance criteria and will lead to effective consultation to enable the development of future impact analysis.

In situations where content of the discussion document does not contain sufficient initial impact analysis to meet the relevant standard, the discussion document and Cabinet paper need to be referred back to the RIA team by the author to determine the next steps. For instance:

- If an interim RIS is not provided, a statement will need to be included in the Cabinet paper informing Ministers that the content of the discussion document does not contain sufficient impact initial analysis to meet the quality assurance criteria and lead to effective consultation and the future development of a good quality RIS. A brief explanation needs to be provided about the deficiency in relation to the relevant criteria.

If the content of the discussion document is assessed as not meeting the quality assurance criteria and is submitted to Cabinet without an interim RIS, this will be recorded by the RIA

Team as non-compliance for reporting purposes. Cabinet can decide whether or not to release the discussion document.

Quality assurance criteria for discussion documents

The quality assurance criteria used by the panel (or QA expert) to assess the content of discussion documents have been revised to support effective consultation and the development of a good quality RIS to support Cabinet's final decisions.

Quality assurance criteria
Written in plain language and proportionate in terms of size and complexity. Is the discussion document written in language that is appropriate for the intended audience? Is it clear, concise, and well-organised? Is the level of detail and complexity appropriate for the audience? Is the length of the document proportionate to the magnitude and proposed impact of the proposal?
Clear scope and objectives. Is it clear what is in and out of scope of the consultation exercise? Are the consultation objectives clear (including decisions that have already been made by Cabinet and decisions that have yet to be made)? Is it clear how the feedback from respondents will be used to inform future decisions?
Initial analysis. Does the document clearly address the regulatory context and the nature of the problem or presenting issue/question with reference to some evidence? Does the document contain a range of feasible options? Is there some initial analysis of the possible impacts of the options?
Open consultation questions. Are the questions open and do they invite discussion? Is there scope for respondents to provide feedback on issues not covered by direct questions posed in the discussion document?

Applying the quality assurance criteria to discussion documents

The panel (or QA expert) undertakes an independent review of the content of the discussion document against the QA criteria and provides a QA statement to insert in the Cabinet paper indicating whether the document is likely to lead to effective consultation and enable the development of future impact analysis. The structure of the standard QA statement for a discussion document to be included in the Impact Analysis Section of the Cabinet paper is outlined in Annex One.

Where there is a significant deficiency (or a number of minor deficiencies) in the discussion document, the panel may assess the document as not meeting the criteria. This would be the case if the deficiencies are such that it is not likely to lead to effective consultation and the development of a good quality RIS to inform Cabinet's final decisions.

There are likely to be situations where one or more criteria are partially met. Where this is the case, the panel (or QA expert) should make a binary judgement "on balance" on whether the overall, the discussion document meets or does not meet the QA criteria. If there is a deficiency, it should be explained in the Impact Analysis section of the Cabinet paper so that Ministers are aware of any limitations when agreeing to release the discussion document.

The author needs to inform the Ministry for Regulation's RIA team when the content of a discussion document "does not meet" the criteria and contains insufficient impact analysis to support Cabinet's decision to release it. The author should inform the RIA team by email and forward a copy of the discussion document and the Cabinet paper.

The RIA Team encourages agencies to engage with their QA panel early, in case the panel indicates that substantial modifications may be required to meet the standard. If the panel indicates that the discussion document cannot meet the required standard, the RIA Team will meet with the agency to discuss how to resolve the situation.

Preparing an interim Regulatory Impact Statement to accompany the discussion document

Where the range of feasible options is being narrowed, an interim RIS will be required. At early stages of the policy process, it is often not feasible to prepare a comprehensive RIS.

The RIA Team recommends focussing on some key sections in the standard RIS template (specifically the coversheet and sections one and two) to cover the following:

- The status quo and the nature and extent of the problem.
- The policy objectives.
- Options analysis, which should include:
    - The criteria that will be used to assess the options (if different from the objectives).
    - Identification of the full range of feasible regulatory and non-regulatory options.
    - If the options are narrowed in the discussion document, the rationale for narrowing the range of options presented in the discussion document.
    - Preliminary cost benefit analysis and impacts on regulated parties to the extent possible. More information can be sought through the consultation process to inform this section in the final RIS (see consultation questions outlined in Part C: Developing effective discussion documents).
- If possible, how the options will be implemented including potential risks and possible mitigations (further information on these issues can be sought through the consultation process).

Agencies are not required to include implementation and monitoring arrangements in the interim RIS (i.e. section three in the RIS template) because detailed planning is undertaken later in the policy development process. However, plans for implementation and monitoring will need to be discussed in the final RIS when policy decisions are being sought.

The interim RIS needs to be published alongside the discussion document on the agency's website so it can be readily accessed by respondents as part of the consultation process.

Quality assurance of the interim regulatory impact statement

The interim RIS is assessed by the panel (or QA expert) and the discussion document needs to be provided to the panel as context.

The panel assesses the interim RIS against the RIS QA criteria, but the assessment is tailored to the circumstances. The QA panel should take into consideration:

- The stage of policy development,
- The nature of the decision being sought, and
- The level of analysis possible.

The interim RIS should cover the full range of feasible options. Where there are gaps in the interim RIS, the panel (or QA expert) assesses whether they are likely to be addressed through the material and questions in the discussion document (see consultation questions outlined in Part C: Developing effective discussion documents).

The panel (or QA expert) should then produce a statement about whether the interim RIS "meets", "partially meets" or "does not meet" the RIS QA criteria. As with a typical RIS, the QA statement should be included in the impact analysis section of the Cabinet paper and the interim RIS itself (the structure of the statement is outlined in Annex Two).

Part B: Best practice consultation processes

International obligations apply to the consultation process

New Zealand's international obligations to undertake public consultation on proposed changes to a broad range of regulatory proposals have implications for the way in which consultation is undertaken through the RIA process.

The consultation obligations in New Zealand's trade agreements are likely to apply to a wide range of regulatory proposals. For example, the Ministry of Foreign Affairs and Trade has identified around 165 Acts that empower the making of secondary legislation that would likely be caught by our international consultation obligations. Changes to those Acts themselves are also likely to be affected.

A regulatory proposal will be subject to such a consultation obligation if it concerns matters covered by trade agreements and would be likely to affect trade or investment. The RIA Team and the Ministry of Foreign Affairs and Trade Legal Division can provide guidance as required. A Regulatory Impact Statement can be a convenient way to provide New Zealand's trade partners with appropriate assurance on how an external consultation obligation has or will be met.

While the details of consultation obligations vary between trade agreements, they generally require:

- consultation to be public,
- sufficient detail to be provided so that interested people can understand whether and how their interests might be affected, and
- a reasonable amount of time for those people to consider and comment on the proposal.

What constitutes a "reasonable" consultation period is often not defined, but a minimum of 60 days is common among other jurisdictions. Bearing that in mind, together with domestic complaints about short consultation periods, the Ministry considers that 60 days is an appropriate default starting point for what should be considered "reasonable" in New Zealand.

Example: Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

The CPTPP Agreement obliges New Zealand "to the extent possible, [to] provide interested persons and other Parties with a reasonable opportunity to comment" on proposed laws and regulations "of general application relating to any matter covered by the Agreement." Given the broad scope of the CPTPP Agreement, this will affect a wide range of primary and secondary legislation. The CPTPP Agreement specifies 60 days as the default expected minimum consultation period for any changes to secondary legislation affecting trade and investment.

Recommendations regarding the consultation process for discussion documents

The Ministry for Regulation has made recommendations in this section regarding the consultation process and in Section C has outlined the quality assurance criteria that must be applied to the content of discission documents.

To support effective public consultation, the Ministry for Regulation recommends that agencies aim to:

- **Actively seek feedback** by consulting widely throughout the policy development process with relevant groups:
    - **Allow a reasonable time period for comment.** What is reasonable will depend on the circumstances and the nature of the proposal. The Ministry for Regulation recommends 60 days as the starting default minimum for public consultation. Justification should be provided in the Cabinet paper if the period of consultation is less than 60 days. As noted in the earlier discussion of international obligations, New Zealand has obligations to consult that will apply to regulatory proposals in a wide range of sectors. This generally includes providing interested parties with a reasonable opportunity to comment, with 60 days being a common international minimum benchmark for what is considered reasonable in this regard.
    - **Advertise broadly.** To reach the widest range of potential respondents that are likely to be impacted by the proposed options, the government needs to consider how it will alert relevant people and stakeholders as early as possible to the fact that a consultation process is intended or is now underway. This potentially includes both advance notice and the use of a wide range of different communication channels, including social media, and potentially tailored messages with different relevant audiences in mind.
    - **Make it easy to respond.** Tailor the consultation process to the preferred engagement style of those being consulted (e.g. take into account ethnic and

cultural considerations). Also allow for responses in different forms to provide accessibility (e.g. online forms, uploaded or emailed documents, face-to-face meetings/forums) and possibly also formats for the disabled community.

- **Coordinate** the consultation process to the extent possible with other internal teams and other agencies on policy changes planned or underway.
    - **Consider existing regulatory stewardship arrangements**[3] to identify any wider regulatory impacts associated with the proposals and which agencies need to be involved in the consultation process.
    - **Minimise consultation fatigue** for stakeholder groups that could potentially be consulted by more than one agency, or by multiple consultations within the agency.

[3] For instance, there could be an existing Regulatory Charter or Memorandum of Understanding that outlines which agencies have roles and responsibilities in relation to the regulatory system.

Part C: Developing effective discussion documents

Discussion documents should be prepared with the goal of enabling effective consultation with stakeholders, and eventually lead to producing high quality impact analysis to inform Cabinet's decision making.

If a discussion document does not exclude options from consideration, it will not be required to contain extensive impact analysis. However, where the options are narrowed and there is no Ministerial certification, a separate interim RIS is required or the impact analysis requirements will not be met. An interim RIS in this situation should outline the full range of feasible options, including the options in the discussion document (see Part A for more information on how the RIA process applies to discussion documents).

It will be easier to meet the quality standard if the discussion document follows the structure of a RIS as far as possible, given the stage of policy development. In other words, the discussion document should provide a clear articulation of the proposed regulatory changes (i.e. a clear problem statement for stakeholder comment, make the case for government intervention and consider a full range of feasible potential options to address the identified problem).

How are Regulatory Impact Statements and discussion documents different?

The key differences between RISs and discussion documents are outlined in the following table.

Regulatory Impact Statement	Discussion document
The RIS is the agency's document and may indicate the agency's preferred option based on impact analysis.	Discussion documents are often issued by a Minister.
The RIS needs to outline limitations and constraints on the analysis, including Ministerial direction which may limit the scope of potential policy options.	The discussion document needs to discuss any gaps in information or any limitations on the scope of potential policy decisions. It may therefore be important to make explicit any matters on which submissions are specifically not invited.
A RIS is not an advocacy document. It should provide officials' best advice on impacts, presented dispassionately and without prejudice.	A discussion document can be an advocacy document. It can (and sometimes ought to) be more provocative.

The major feedback from consultation, and the agency's responses, should be summarised in the RIS that accompanies the final Cabinet paper.	If assertions are used to justify particular positions or analysis in a discussion document, it is important that respondents are explicitly invited to challenge the assumptions, analysis and conclusions supporting the options being advocated. These submissions and challenges should be received and considered in good faith.
A RIS should be easy to read and understand for an informed, but non-expert decision-maker.	Discussion documents should be easy to read and understand. They should be pitched around the same level as the RIS, unless the intended audience is: • Broader, in which case respondents might need a more basic introduction in the discussion document to the policy question being discussed, or • Narrower (for example, a small population of experts), in which case respondents are likely to possess some degree of technical knowledge.

Questions that work

Questions should serve at least two functions: to invite challenge and to improve information. Effective questions are as open as possible but are explicit about what is being sought.

While open ended questions are generally best practice, there can be benefits in some circumstances with yes / no and other closed questions that enable sound quantitative analysis to be undertaken. Scalable questions can also be used. For example, "on a scale of 1-5 how much do you agree with this objective?" These questions can enable you to analyse all the objectives to see how the audience feels about each objective. Ideally, questions should be asked after any assertion or hypothesis that can be challenged or augmented. It is useful to include a consolidated list of questions (e.g. as an appendix), so that readers have access to all the questions in one place.

The rest of this section is structured to follow the impact analysis framework found in a RIS. Each section concludes with some recommended questions.

What is a good description of the status quo for a discussion document?

A good discussion document should include a description of the current arrangements (status quo) and how they are likely to evolve without further regulatory change. In other words, the document should outline a baseline case (or a 'do nothing' scenario) that says, "Suppose we took none of the regulatory options considered here: what would happen?"

Examples of questions

- *Do you agree with this characterisation of the current arrangements? If not, please provide evidence to support your views.*
- *How would you describe the current arrangements? What would happen if no regulatory changes are made?*

Problem definition in discussion documents

Agencies should consider the size and magnitude of the problem in their problem definition. If agencies are uncertain about the reality or size of the problem, agencies should use questions to test their thinking:

Examples of questions

- *Do you agree with this characterisation of the problem? If not, why not?*
- *In your view, what are the problems with the current regulatory settings?*
- *How important are these problems?*
- *How important are they to the New Zealand public?*
- *What are the consequences of continuing to follow (or not follow) international practice in terms of New Zealand's public interests?*
- *What evidence should we examine to inform further analysis of the problems?*

Objectives in discussion documents

The objectives in discussion documents should be clear and in plain English. They should have the potential to be observable; stating what evidence would suggest a particular objective or desired outcome had been achieved.

Examples of questions

- *Have we identified the right objectives?*
- *Do you think any of these objectives are more important than others?*
- *Are there any tensions between these objectives?*

Identifying options in discussion documents

A discussion document that incorporates impact analysis should identify the full range of feasible options. They don't all need to be discussed in detail (as some may be discounted),

Unless past decisions limit the set of options that can be consulted on, a discussion document should identify and describe:

- the evolution of the status quo where no further regulatory changes occur (behaviour may still be expected to change over time)
- one or more non-regulatory options (e.g. education, industry self-regulation), and
- one or more regulatory options, including what would happen without regulation (if different from the status quo).

If deliberately excluding feasible options, or options that respondents are likely to think are feasible, this section should explain why. Where the range of feasible options is being narrowed, an interim RIS will be required.

Examples of questions

- *Do you agree that these are the correct options to consider? If not, why not?*
- *What other options should we consider to solve the problem?*
- *Of the options discussed, please say which options should be considered/not considered. In both cases, please explain why.*

Options analysis in discussion documents

The questions outlined in discussion documents may depend on the quality and quantity of evidence gathered so far—agencies may have limited information at the consultation stage of a policy process and should be open about that. Respondents may be aware of impacts that officials and decision-makers might not be aware of.

Discussion documents should set out agencies' preliminary views on impacts (costs, benefits, likely behavioural changes, and risks) and attempt to get better information from stakeholders. Consultation should seek sources of information, identification of other parties potentially affected by options (including an indication of likely positive and negative impacts), valuation methods and views on whether there are any other matters that may not have been considered appropriately.

Consultation questions should test agencies' consideration of options and impacts. Consultation for high quality impact analysis should aim at assessing the likelihood of the impacts - including probabilities and the projected costs and benefits of best- and worst-case scenarios.

Examples of questions

- *Do you agree with the impacts we have outlined of this option (or these options) i.e. costs, benefits, likely behavioural changes, and risks? If not, why not? Please provide evidence to support your answer.*
- *What do you consider are the impacts of this option? (It is usually best to ask about impacts and risks option-by-option).*
- *How should we value these impacts?*
- *What impacts are not included here?*
- *What is the net impact of this option?*
- *How likely is it that this option could result in greater benefits than those discussed here? How likely is it that this option could result in greater costs than those discussed here? What do you think is the best- and worst-case scenario?*
- *What are the stakeholder groups likely to be positively, or negatively, impacted by this option? How are they likely to be impacted?*
- *Are there likely to be disproportionate impacts on some affected parties (groups of people or organisations)?*
- *What sources of information should we use to assess expected costs and benefits and to assess risks?*

Implementation and monitoring

Stakeholders who closely engage with, or are affected by, the government agency that enforces or monitors the status quo will have an interest in next steps and may be able to advise whether the options are able to be implemented as envisaged by agencies. Detailed plans for implementation are unlikely to have been developed at this stage, however it may be possible to give an outline of the general direction so stakeholders can have an indication of whether the plans will be effective and whether the timeframes are achievable, which could provide useful input to the final RIS.

Examples of questions

- *How should the proposal considered in this document be implemented and monitored?*
- *Do you agree with the proposed implementation and monitoring arrangements? If not, please provide evidence to support your view.*

Annex One: Discussion document text for the 'Impact Analysis' section in the Cabinet paper

The agency's panel (or QA expert) assesses the content of the document against the quality assurance criteria for the discussion document (when there is no accompanying interim RIS). If the document meets the QA criteria the following statement is included in the Cabinet paper.

Quality assurance statement for discussion documents

"As required by the Ministry for Regulation, [the agency QA panel] has reviewed the discussion document and determined that it will lead to effective consultation and enable the development of future impact analysis. Therefore, a separate regulatory impact statement (RIS) is not required at this stage. A full RIS will be completed at a later stage to inform Cabinet's final decisions on this proposal."

[Note, although it is not required, the panel can choose to include additional comment on the discussion document].

Conditions

The [agency's] QA panel will review the document to confirm whether it contains sufficient impact analysis to meet the quality assurance criteria for discussion documents:

- **Written in plain language and proportionate in terms of size and complexity.** Is the discussion document written in language that is appropriate for the intended audience? Is it clear, concise, and well-organised? Is the level of detail and complexity appropriate for the audience? Is the length of the document proportionate to the magnitude and proposed impact of the proposal?
- **Clear scope and objectives.** Is it clear what is in and out of scope of the consultation exercise? Are the consultation objectives clear (including decisions that have already been made by Cabinet and decisions that have yet to be made)? Is it clear how the feedback from respondents will be used to inform future decisions?
- **Initial analysis.** Does the document clearly address the regulatory context and the nature of the problem or presenting issue/question with reference to some evidence? Does the document contain a range of feasible options? Is there some initial analysis of the possible impacts of the options?

- **Open consultation questions.** Are the questions open and do they invite discussion? Is there scope for respondents to provide feedback on issues not covered by direct questions posed in the discussion document?

We also encourage – but do not require – QA panels to assess whether the document includes suitable questions for stakeholders that will prompt respondents to:

- confirm and challenge the analysis;
- provide feedback on the assumptions, estimated magnitude of impacts etc.; and
- suggest additional options.

Contact the RIA Team if the discussion document will not lead to effective consultation

Please get back in touch with the RIA Team if the panel indicates that the discussion document cannot meet the required standard and we can discuss how to resolve the situation. Please also share the final version of the discussion document and Cabinet paper with the RIA Team.

Annex Two: Interim regulatory impact statement text for the 'Impact Analysis' section in the Cabinet paper

Where an interim RIS is required, the agency's QA panel assesses it against the RIS quality assurance criteria, taking into account the stage in the process as outlined in Part A.

Quality Assurance Statement for Interim RIS

A quality assurance panel with members from [insert agency or agencies if joint review] has reviewed the interim Regulatory Impact Statement (RIS), [insert RIS title] produced by the [insert agency] dated [insert date]. The panel considers that it [does not meet/partially meets/meets] the Quality Assurance criteria.

The panel has assessed the RIS on the basis that it is an interim RIS accompanying a discussion document.

[Insert one or two short paragraphs along the following lines]

If the assessment is "does not meet" or "partially meets", explain how the assessment relates to the relevant QA criteria. Then consider:

- If there are gaps in the interim RIS, is this likely to impact on the effectiveness of the consultation process?
- Does the panel consider the gaps may be able to be addressed following the consultation process?

[Note, if the assessment is "meets", the panel may still choose to insert a comment].

Next Steps

This quality assurance text should be included in full in the Cabinet paper. This text also needs to be included in the coversheet of the interim RIS. You will then need to ensure that the interim RIS is attached to the Cabinet paper.

Informing the QA panel of any further changes

You must ensure that any substantive changes made to the document following receipt of the quality assurance statement are notified to the QA panel.

The panel will either provide confirmation that the quality assurance statement can remain intact or notify you of any further changes required in order to ensure the quality assurance criteria are met.

Publication of interim RIS alongside discussion document

The interim RIS should be published on the agency's website along with the discussion document for public consultation. It also needs to be published on the Ministry for Regulation's website through RIA Online.

Annex Three: Working Groups and Committees

A Working Group or Committee may undertake independent consultation and report to the responsible Minister with their recommendations. Typically, the agency then advises the Minister on the Working Group or Committee's recommendations and then prepares a RIS on any subsequent regulatory proposals that go to Cabinet.

As the agency will need to write a RIS on any regulatory proposals that come from the Working Group or Committee, the agency should seek as far as possible to ensure that the principles of effective consultation and good impact analysis are built into the Committee's terms of reference. For example, the terms of reference should ask the Committee to clearly define the problem/s and objective(s) and describe and assess feasible options. This may not always be possible, but if it can be done, it helps avoid the prospect of having to deal with recommendations that have not been sufficiently tested and where alternatives have not been considered.

At the very least, the agency should be applying RIA processes in its advice to the Minister on the Working Group's or Committee's report. The earlier that agencies incorporate RIA requirements into the process, the better the opportunity to get the fundamentals right (e.g. quality problem definition and options identification). This in turn should position the agency well to complete quality analysis to support final regulatory decisions.

Annex Four: Summary of main scenarios for discussion documents

DD type	Issues paper	Discussion document (full range of options)	Discussion document (limited options presented but confirmation that options are not being narrowed)	Discussion document (narrowed options)
Description	Seeks stakeholder views on an issue or defining a problem. Cabinet is not asked to make any in-principle decisions.	Seeks stakeholder views on an issue and full range of feasible options. All options are considered by Cabinet.	Seeks stakeholder views on some limited options. Minister certifies in the Cabinet paper and discussion document that options are not being narrowed and the full range of feasible options will be considered in future, when Cabinet makes final policy decisions.	Seeks stakeholder views on narrowed options.
Options narrowed?	Does not include options to address the issue.	Conducts an interim analysis of full range of options and asks open ended questions.	A small range of feasible options identified.	Options are either explicitly narrowed or implicitly narrowed with no Ministerial certification.
RIA product	None.	All analysis contained in DD. Future RIS required.	Future RIS required.	An interim RIS is required to accompany the DD. Future RIS required.
QA Panel assessment	None.	DD is assessed against the QA Standard for Discussion Documents.	DD is assessed against the QA Standard for Discussion Documents.	The interim RIS is assessed against the RIS criteria.
Other comments			As noted above, Ministerial certification and relevant noting recommendation required.	The DD does not need to be QA'd by the panel, but it should be provided to the panel for context.

Te Kāwanatanga o Aotearoa
New Zealand Government

regulation.govt.nz