

Bev McShea

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Sent: Monday, September 16, 2013 4:24:58 PM
To: Submissions; Council Enquiries (Enquiry)
Cc: Porter Kate; Clifford Phillippa; Leigh Walker
Subject: Nelson Draft Local Alcohol Policy: Submission by Progressive Enterprises
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Dear Council

Please find **attached** by way of service a submission on behalf of Progressive Enterprises Limited in relation to the Nelson City Council's Draft Local Alcohol Policy, along with the Christchurch City Council cost and benefit analysis and the New Zealand Government Treasury's Regulatory Impact Analysis Handbook 2013, referred to in the submission.

We would be grateful for an opportunity to talk through the details of our submission as there is a lot of information we have developed through participating in other Draft LAP processes.

I would be grateful if you could please confirm receipt of this email.

Regards

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SUBMISSION TO NELSON CITY COUNCIL
ON THE NELSON CITY DRAFT LOCAL ALCOHOL POLICY

16 SEPTEMBER 2013



PROGRESSIVE

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Progressive Enterprises wishes to appear before the Nelson City Council ("**Council**") to present this submission.

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PART A: SUMMARY AND RECOMMENDATIONS

1. EXECUTIVE SUMMARY

- 1.1 Progressive Enterprises is one of New Zealand's leading supermarket operators and currently operates 166 Countdown supermarkets across New Zealand. It is also the franchisor of the SuperValue and FreshChoice brands in New Zealand, which represent a further 56 stores, independently operated by franchisees. Some of the SuperValue and FreshChoice stores are small supermarkets and are categorised under the Sale and Supply of Alcohol Act 2012 ("**the Act**") as grocery stores. We include them when we refer to supermarkets in this submission.
- 1.2 We are a significant retail investor and employer in the Nelson area¹ and an active part of the community we work and live in. In Nelson, we operate three Countdown supermarkets and one FreshChoice grocery store, which are:
- (a) Countdown Nelson, which usually trades between 7am and 10pm, but has flexibility in its off-licence hours to sell beer and wine between 7am and 11pm, seven days a week.
 - (b) Countdown Stoke, which usually trades between 7am and 10pm, but has flexibility in its off-licence hours to sell beer and wine between 7am and 11pm, seven days a week.
 - (c) Countdown Trafalgar Park, which usually trades between 7am and 10pm, but has flexibility in its off-licence hours to sell beer and wine between 7am and 11pm, seven days a week.
 - (d) FreshChoice Nelson, which usually trades between 7am and 9pm, but has flexibility in its off-licence hours to sell beer and wine between 7am and 10pm, seven days a week.
- 1.3 We understand that alcohol consumption has the potential to cause serious harm² particularly if it is consumed excessively or inappropriately. The Act sets in place a default national licensing approach and allows councils to tackle local issues. The purpose of a Draft LAP is therefore to respond to local concerns, not to re-examine the national issues which were widely considered and evaluated and led to the Act.
- 1.4 Reducing alcohol-related harm will need action from all parts of the community. As a retailer, we have a role to play along with other off-licensees, on-licensees, regulatory agencies and consumers. We are committed to ensuring that our stores sell and supply beer and wine in a safe and responsible manner. Please see **Appendix 1 and 1A** for a description of our commitments as a responsible operator. We support efficient and effective reasonable initiatives that minimise alcohol-related harm.
- 1.5 By law, supermarkets sell beer and wine only. We appreciate that a licence to do so is not a right, but a privilege, and we work hard to maintain that privilege. With 2.5 million customers across the country each week, Progressive Enterprises is nationally recognised as a good operator within the licensing industry. Through our training, liquor and ID 25 policies, which are over and above that

¹ Data provided by the Council in its Agenda for the Ordinary Council meeting dated 6 August 2013 identifies that of all licensed premise types in Nelson, supermarkets have the highest employment rate with 3.1% of employed Nelson residents being employed by supermarkets. This number is significant given that the Council Agenda has identified that only 7 off-licence supermarkets operate in Nelson.

² Law Commission Report, Alcohol in Our Lives at chapter 2.

required by the law, we strive to achieve best practice in the way that we market and retail beer and wine.

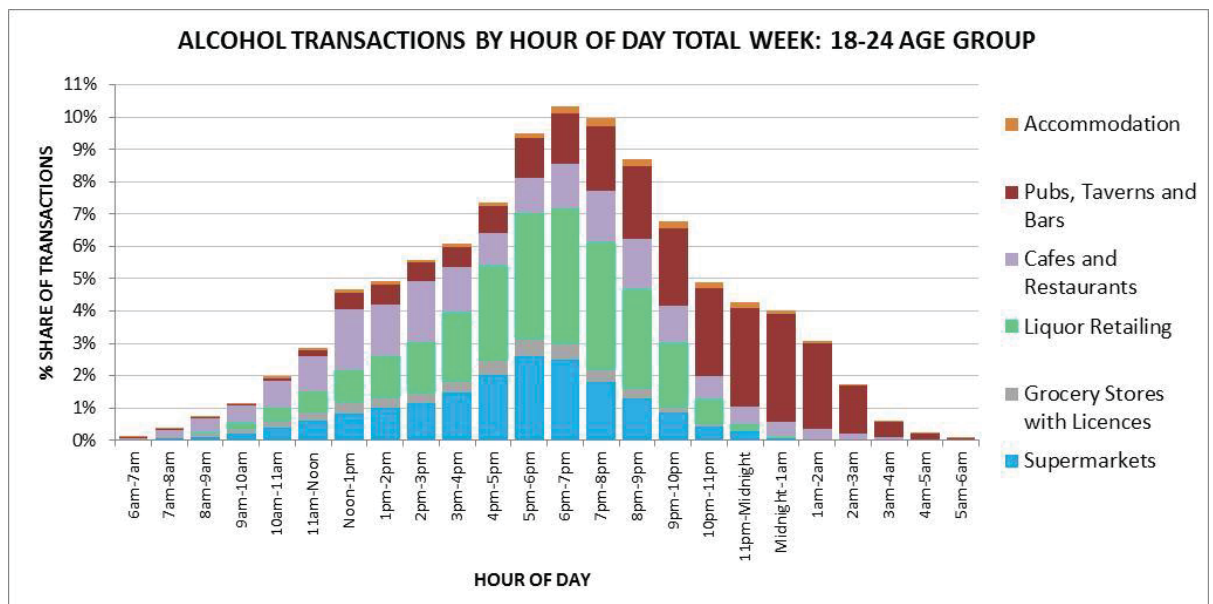
- 1.6 It is important to remember that decisions on the Draft LAP are also made under the Local Government Act 2002 ("**LGA**"). Under the LGA, councils need to assess matters such as the benefits and costs of each option in terms of the present and future interests of the district or region³. To make these decisions it is therefore critical to have a sound evidence base, and because Progressive Enterprises is working with a number of different regions around the country, to assist that process we provide some information below:
- (a) We are a business that primarily sells produce and groceries. This applies to all age groups across all hours of the day. More specifically:
 - (i) On any day 18% of our customers purchase beer or wine.
 - (ii) 16% of customers buy beer and wine at the same time as they purchase a selection of general groceries.
 - (iii) 1.7% of purchases in our supermarkets contain beer or wine only.
 - (iv) This has shown a consistent downward trend from 2009 when it was 2%.
 - (v) 0.3% of purchases in our supermarkets contain wine or beer and snacks or confectionary.
 - (vi) In our supermarkets, young adults consistently have a lower share of those purchases which include beer or wine than for our customers overall, across the week. On average, nine out of ten 18 to 25 year old customers purchase no wine and beer when they visit our stores.
 - (b) In summary, our supermarkets are places where a diverse range of New Zealanders buy their food, and their beer and wine. From the very robust sales data available to us, we can confirm that the vast majority of New Zealanders do not use our supermarkets as a shop to buy beer and wine only.
- 1.7 The information provided to the Council by the Medical Officer of Health⁴ and the Police⁵ confirm that 18-24 year olds are the key age group in Nelson that suffers from alcohol-related harm.
- 1.8 We have also purchased a national sales dataset⁶ of 53 million eftpos, debit and credit card transactions to show nationwide sales patterns (broken down by hour of week for the 2012 full year) for each type of licensed outlet, including supermarkets. The results are very informative. The raw numbers only show transactions, not alcohol transactions and have therefore been adjusted by Market Economics Limited applying Statistics NZ figures to reflect the respective proportions of sales which are related to alcohol for 18-25 year olds on Friday/Saturday nights. Further details of this are set out in **Appendix 2**.

³ Section 77 of the Local Government Act 2002.

⁴ Presentation by Dr Kiddle, Medical Officer of Health dated June 2013

⁵ Presentation by Inspector Grealy and Sergeant Savage. Undated but provided to Progressive Enterprises by Nelson City Council on 2 September 2013

⁶ BNZ Marketview. This information was obtained in June 2013.



1.9 The national sales data from Marketview shows that:

- (a) Customers who are not part of the young adult segment make up the major share of shoppers in our stores, and their regular shopping - which includes purchases of beer and wine in the evenings - will be impacted.
- (b) Supermarkets are not a significant destination for young adults (18-24 year olds) to buy beer or wine on Thursday, Friday and Saturday nights between 9pm and 11pm.
- (c) Across the week as a whole, about 11% of young adults' total weekly spending on alcohol occurs between 9pm and 11pm. During this time young adults' alcohol purchases are comprised of:
 - (i) Purchasing at bottle stores (30% of the 11%);
 - (ii) Purchasing at on-licence premises (64%), which include restaurants, bars, clubs and taverns; and
 - (iii) Purchasing in supermarkets and grocery stores (6%).
- (d) Fridays and Saturdays show a similar pattern, with supermarkets and grocery stores attracting a smaller share of young adults' expenditure on alcohol between 9pm and 11pm (it reduces from around 6% of the 11% total spend highlighted above, to around 3%).

1.10 Across all commercial outlets, the evidence of Dr Douglas Fairgray shows that 18 to 24 year olds account for 30 to 50% of all alcohol purchases after midnight (nationally). Accordingly, it is not clear (when the data provided to the Council by the Medical Officer of Health, the Police and ACC confirms that the 18-24 year olds are the key age group that suffers from alcohol-related harm) why the Council believes that imposing blanket licence restrictions across all supermarkets will have a material effect on young adult behaviours, because the relevant supermarket customer numbers are very small. On average there are 15 young adults buying beer or wine in a Countdown store per store between 9pm and 11pm.

- 1.11 Regulations such as the Draft LAP can have significant economic impacts which are relevant when considering the benefits and costs of a Draft LAP. We encourage the Council to consider the likely effectiveness of the Draft LAP and its impact on the community. For your background information, we attach:
- (a) Christchurch City Council's cost benefit analysis report; and
 - (b) New Zealand Treasury's Regulatory Impact Analysis Handbook 2009.
- 1.12 Christchurch City Council's cost benefit analysis concluded that:
- (a) Any reduction in consumption caused by the Draft LAP will be minor and hence so too will any reductions in acute alcohol related harm. As a result, policy benefits will be minor.
 - (b) There is no evidence to support or oppose the proposed off-licence restrictions. Further, Christchurch City Council does not appear to have a strong community mandate for reducing the hours that alcohol can be sold at certain off-licences, such as supermarkets.
 - (c) Because the policy does not (and essentially cannot) target problem drinkers, it is fairly blunt and therefore has the potential to negatively impact a number of law-abiding citizens.
- 1.13 As a national retailer, Progressive Enterprises has participated in every Draft LAP across the country to date. Often the Police and/or the Medical Officer of Health suggest that off-licence hours should not start until 9am. Sometimes they are supported by trade competitors with a view to seek a 'fair playing field'. However the Draft LAP is not about creating a new trading environment, or creating an administratively-easy system for councils to operate. It is about reducing alcohol-related harm. We have seen no evidence from any submitter across the country that prohibiting the sale of beer and wine in supermarkets between 7am or 9am or between 9pm and 11 pm will benefit the community by minimising alcohol-related harm.
- 1.14 We believe that retaining the default national opening hours for supermarkets, as the Draft LAP proposes, is correct for the following reasons:
- (a) Presently, under more lenient licensing laws, most bottle stores do not open until 9am. So we cannot see why a District Licensing Committee (or the Alcohol Regulation and Licensing Authority) would begin to allow bottle stores to begin trading at 7am, even if the default national hours for off-licences remained in place.
 - (b) Therefore a 9am restriction for off-licences would be a control targeted only at supermarkets.
 - (c) The Act prohibits the display of alcohol advertising or signage on the external walls of supermarkets. The Act also limits the internal display of beer and wine to one single area within a supermarket, the visual appearance of which would not change during unlicensed hours. We do not currently receive complaints about children walking past supermarkets.
 - (d) There is no evidence to support a 9am restriction for supermarket off-licenses. There is good evidence about alcohol-related harm and late night hours (after midnight), but none of those studies related to the 7am to 9am time period.

- (e) Progressive Enterprises' own expert literature review⁷ indicates that the available studies of changing licensed hours predominantly relate to on-licensed premises, and to changes within the early morning hours between midnight and 7am, and cannot be directly applied.
- (f) However we can say with absolute certainty that this proposed restriction will inconvenience the vast majority of our customers who are shopping outside of these times and who are not the target of the control.

1.15 An LAP sets maximum hours for licensed premises, but within this, Council still has the power and ability to approve hours on a case by case basis, as they do currently. Some supermarkets and grocery stores currently do, and could continue to have, different maximum licensed hours to bottle stores. Notably:

- (a) Councils are able to make fine-grained distinctions between different types of alcohol licences in their LAP;
- (b) Current case law supports differential hours between supermarkets and bottle stores, particularly in the morning;⁸
- (c) Supermarkets fulfil different customer needs to bottle stores;
- (d) There are far fewer supermarkets in key areas, such as the CBD, than bottle stores; and
- (e) Supermarkets have different customer trends to other licensed premises.

1.16 Trading hours for supermarkets have changed over the years to reflect the changing nature of the average New Zealand household, where both parents frequently work and activities are factored around a longer day. We believe these changes were reflected by Parliament in setting national default license hours for wine and beer sales from 7am to 11pm and we support that decision.

1.17 **Appendix 1** of this submission explains the extensive changes that the Act requires in supermarkets from 18 December 2013, including reduced maximum off-licence hours from 24 hours per day to 16 hours per day (7am to 11pm). Until those changes have been implemented and have had time to be effective, it is our strong belief that a further restriction to maximum off-licence hours cannot be justified. Licence hours will still be able to be controlled on a case by case basis. This will enable Council to implement an adaptive management approach to minimising alcohol-related harm, learn what changes are effective and appropriately target further changes if they are needed.

1.18 We acknowledge that our supermarkets within Nelson do not operate beyond 9pm. However, it is not consistent with the purpose of the Act to use that as the reason to restrict maximum off-licence hours to this time. The Sale of Liquor Act 1989 was introduced partly to move away from "need based" licensing.⁹ While the Act allows councils to consider a range of matters when deciding appropriate off-licence hours, needs based licensing is not an appropriate reason to move away from the national default hours.

⁷ Dr Mark Elwood reviewed the Christchurch City Council literature review.

⁸ See *Russell Nieper Limited* (LLA decision 1116/93).

⁹ See *Krish Liquor Ltd* (LLA Decisions PH490-491/08). "We refer briefly to the argument that there are already sufficient licensed premises in the area. It is important to appreciate that the Sale of Liquor Act 1989 no longer requires an applicant to establish a community need for the business. In 1989 Parliament essentially legislated for a 'free market' for liquor outlets. In the absence of any planning restrictions, there is no legal limit to the number of licences, which can be granted".

- 1.19 Our supermarket operating hours are determined according to market demand. There is however, no current demand for our supermarkets in Nelson to stay open beyond the 10pm restriction proposed, but if the market develops and there is increased demand for longer operating hours, we should be able to apply for an off-licence that will then be considered on its merits (in the same way that a resource consent application is determined on its merits). The Council can still set reduced hours for each premise if they so choose on a case by case basis. The 7am – 11pm default hours do not mean those are the hours each outlet will have.
- 1.20 Draft LAP controls for density, proximity and location may be appropriate for licensed premises such as bars, bottle stores and restaurants. For supermarkets, these controls are more appropriately addressed in the district plan. Therefore the Draft LAP should not control these matters. However Progressive Enterprises would support the Council proposing a plan change to the district plan addressing supermarket location, proximity and density in the context of the RMA (which can include matters relating to alcohol-related harm as it is within the ambit of an environmental effect).
- 1.21 To deliver high quality regulation as required by the LGA, LAPs need to promote a decision-making framework that is integrated with the RMA's district plan and resource consenting process as well as the building consent process and we seek some amendments to the Draft LAP to reflect this.

2. RECOMMENDATIONS

2.1 Progressive Enterprises **supports** the following Draft LAP provisions:

- (a) The proposed opening hours of off-licences (7am) to the extent they relate to supermarkets and grocery stores.
- (b) The proposed caps on off-licences to the extent they relate to supermarkets and grocery stores.
- (c) The proposed controls over the location of off-licensed premises by reference to broad areas to the extent they relate to supermarkets and grocery stores.
- (d) The proposed controls over proximity off-licensed premises to other licensed premises or facilities to the extent they relate to supermarkets and grocery stores.
- (e) The proposed controls over the location of off-licensed premises by reference to proximity to facilities of a particular kind or kinds to the extent they relate to supermarkets and grocery stores.

2.2 Progressive Enterprises **seeks the following changes to** the Draft LAP provisions:

- (a) The maximum licence closing hours for supermarkets and grocery stores should be 11pm (Policy 3.1.1).
- (b) Additional objectives should be included (Policy 2.7):

Provide an efficient regulatory framework through promoting a decision making framework that is integrated with the district plan and the resource consent and building consent processes.

Ensure that the LAP does not duplicate regulatory controls contained within the district plan.

Facilitate the early processing of licence applications in conjunction with resource consent applications or building consent applications in so far as it is possible.

- (c) The discretionary conditions proposed in the Draft LAP (Policy 3.1.2) should be amended as follows:

"Display of safe drinking messages/material. **The form and content of the messages and material to be displayed must be sufficiently flexible so that licensees can display nationally consistent safe drinking messages and material that are consistent with good practice.**"

- (d) Supermarkets and grocery stores could have different licensed hours to bottle stores.

PART B: ASPECTS OF THE DRAFT LAP THAT PROGRESSIVE OPPOSES

3. GOOD DECISION MAKING ON LOCAL ALCOHOL POLICIES

3.1 The key principles for good decision making on local alcohol policies are:

- (a) If a council chooses to develop a LAP, it must be to respond to specific local (and not issues which apply universally on a national basis) issues.
- (b) A council's role includes meeting the needs of its community for good quality regulatory performance in a way that is most cost-effective for households and businesses.
- (c) "Good-quality" regulation is efficient, effective and appropriate to current and future circumstances.
- (d) In order to be effective and efficient, the regulatory process must first identify the relevant issue(s) of concern and identify evidence based options to address those issues.
- (e) The only way to achieve this is with evidence based decision making.

4. OFF-LICENCE HOURS

- 4.1 Under Policy 3.1.1 of the Draft LAP the proposed maximum off-licence hours for supermarket premises are 7am to 9pm, Monday to Sunday. Progressive Enterprises opposes these licence hours to the extent that they apply to supermarkets and grocery stores.
- 4.2 The maximum off-licence closing hours for supermarkets and grocery stores should be 11pm. Progressive Enterprises acknowledges that its supermarkets within Nelson do not operate beyond 9pm. However, it is not consistent with the purpose of the Act to use that as the reason to restrict maximum off-licence hours to before 11pm¹⁰ The Sale of Liquor Act 1989 was introduced partly to move away from "need based" licensing. While the Act allows councils to consider a range of matters when deciding appropriate off-licence hours, needs based licensing is not an appropriate reason to move away from the national default hours.

¹⁰ See *Krish Liquor Ltd* (LLA Decisions PH490-491/08). "We refer briefly to the argument that there are already sufficient licensed premises in the area. It is important to appreciate that the Sale of Liquor Act 1989 no longer requires an applicant to establish a community need for the business. In 1989 Parliament essentially legislated for a 'free market' for liquor outlets. In the absence of any planning restrictions, there is no legal limit to the number of licences, which can be granted".

- 4.3 Our supermarket operating hours are determined according to market demand. There is however, no current demand for our supermarkets in Nelson to stay open beyond 10pm, but if the market develops and there is increased demand for longer operating hours, we should be able to apply for an off-licence that will then be considered on its merits (in the same way that a resource consent application is determined on its merits). The Council can still set reduced hours for each premise if they so choose on a case by case basis. The 7am – 11pm default hours do not mean those are the hours each outlet will have.
- 4.4 There is no evidence to suggest that the Act's national default off-licence hours will be ineffective in addressing alcohol-related harm, particularly as they still allow local authorities to control licensing hours on a case by case basis. Accordingly, until the national default off-licence hours have been implemented and have had time to be effective, a further restriction to maximum off-licence hours for supermarkets cannot be justified. Wellington City Council originally proposed off-licence hours of 7am to 9pm, however following the consultation process, Councillors on its Strategy and Policy Committee have voted to adopt hours consistent with the Act's national default hours of 7am to 11pm.
- 4.5 We have considered the information provided on the mandatory considerations under the Act addressing:
- (a) Objectives and policies of the District Plan;
 - (b) Number of licences held in the district, and their location and opening hours;
 - (c) Areas in which bylaws prohibit alcohol in public places;
 - (d) Demography of the district's residents and visitors;
 - (e) Overall health indicators of the district's residents; and
 - (f) Nature and severity of alcohol-related problems in the district.
- 4.6 Notably:
- (a) The Council has not fully considered the impact of the mandatory changes imposed by the Act. The new licensing regime allows a greater range of conditions to be imposed on licenses which will improve the proactive avoidance of alcohol-related harm. There are also more significant penalties for breaching the legislation, particularly around selling to intoxicated persons and minors. There will necessarily be an increased focus on compliance by all licensees. Whilst some of these changes have been acknowledged by the Council,¹¹ no detail has been provided about any of the measures that the Act actually provides. For example, the Council identifies that the Act provides a "persistent non-compliance regime", but no further detail about these restrictions or their likely impact in addressing alcohol-related harm is provided.
 - (b) The Council's assessment of the Act's mandatory considerations does not analyse these considerations in the context of alcohol-related harm. For example, in the Council's analysis

¹¹ See page 2 of the Local Alcohol Policy Report presented to the Policy and Planning Committee, dated 19 February 2013 ("the Report").

of the data regarding the overall health indicators of Nelson residents, the fact that Nelson has a high rate of breast and prostate cancer and had a high birth rate in 2011/2012 has been identified. It is difficult to understand the relevance of this information in addressing alcohol-related issues given that it does not provide any information about the health of the district in the context of alcohol-related harm.

- (c) The proposed restrictions do not take into account the results of the Council's own survey, whereby 61% of respondents felt that supermarket off-licences should be allowed to remain open until at least 10pm. In contrast, only 16% of respondents agreed that supermarkets should only be able to sell beer and wine until 9pm, as the Council is proposing, so there does not appear to be any significant community support for this restriction.¹²
- (d) The information provided to the Council by the Medical Officer of Health does not support the Council's proposed restriction on supermarket licence hours. The Medical Officer of Health identifies that the percentage of weekend presentations in the Nelson and Wairau Emergency Departments which are alcohol-related between 2am and 4am comprises approximately 38% of admissions, which is double the number of admissions that occurs in the 10pm to midnight period (approximately 19%). The number of alcohol-related admissions between 8pm and 10pm is even less (approximately 14%). Given these statistics, there does not appear to be evidence to justify restricting off-licence hours to 9pm.
- (e) The information identified by the Council regarding the number of alcohol-related offences in the Nelson area does not support the Council's proposed off-licence restrictions either. The Council Report includes data from the Police which shows that alcohol-related offending predominantly occurs on Friday and Saturday between the hours of midnight and 3am, with the number of offences committed on a Saturday during this time more than triple the number of offences that occur on a Friday night between 9pm and midnight.¹³ In light of these statistics, the proposal to restrict off-licence hours to 9pm does not seem justified, or based on evidence.¹⁴
- (f) One of the rationales for the Council developing a LAP is that it will have significant benefits including "a fit for purpose policy on the sale and supply of alcohol".¹⁵ Whilst we acknowledge that LAPs provide councils with an opportunity to apply restrictions that respond to identified community issues regarding alcohol-related harm, from the sales data that Progressive Enterprises have analysed, our supermarkets are not a significant destination for young adults to purchase beer or wine, even on Saturday and Sunday nights. In light of this data, we do not understand how the Council's proposed restriction represents a fit for purpose policy as the Council asserts.
- (g) The proposed restrictions do not take into account actual sales statistics, with the consequence that the proposed restrictions are not necessary for supermarket off-licences.

¹² See Attachment 4 of the Council Agenda dated 6 August 2013.

¹³ See Attachment 1, Figure 1 of the Report.

¹⁴ ACC have provided similar data which shows that between December 2012 and April 2013, St John received the most alcohol-related call outs between midnight and 3am (40% of the total alcohol-related call outs). See Attachment 3 of the Agenda dated 6 August 2013.

¹⁵ See page 1 of the Report.

- (h) Supermarkets and bottle stores do currently, and can continue to have different licence hours, an approach the Council's own survey results seem to support.¹⁶ As is the case today, within the maximum off-licence hours of 7am to 11pm, the Council still has the power to determine licence hours on a case by case basis, rather than a blanket approach. However, in the background material provided to Councillors as part of the workshop on developing the Draft LAP, the Council fails to recognise this power.¹⁷

4.7 Progressive Enterprises has commissioned expert witnesses to provide information regarding the various Draft LAPs that have been released for consultation around the country and have used this independent advice in putting together this submission.¹⁸ Dr Douglas Fairgray, an economic analyst, has reviewed numerous sets of data to identify some key trends regarding the sale of alcohol in New Zealand, and finds that:

- (a) The relatively low incidence of young adults purchasing alcohol from supermarkets in the evening period, especially in relation to the large volumes of alcohol purchases being made at the same time in other premises including on-licence, is not consistent with the "off-licence then to on-licence" sequence of alcohol purchasing suggested in the anecdotal material that the other councils have relied on when imposing such restrictions.
- (b) This would suggest that the Draft LAP will have limited effect in terms of intended outcomes (for the target young adult group), and have higher effect in terms of unintended outcomes (on other shoppers).

4.8 As was recognised by the New Zealand Treasury in their Regulatory Impact Analysis Handbook,¹⁹ "stakeholders often have better access to empirical information on the size of (the) problem as well as day-to-day experience with the nature of the real issues. In addition, stakeholders' practical experience can help identify potential unintended effects that policy makers have not considered. Stakeholders may also suggest more practical solutions to achieve the policy objectives". This highlights that the data we have provided should not be treated lightly, and should be given serious consideration.

5. CONTROLS BY BROAD AREA, PROXIMITY AND LICENCE NUMBERS

- 5.1 Progressive Enterprises supports the Council's decision not to impose controls over the location of off-licensed premises by reference to broad areas, other licensed premises or facilities, or by reference to proximity to premises or facilities of a particular kind, to the extent this relates to supermarkets and grocery stores.
- 5.2 Progressive Enterprises also supports the Council's decision not to impose caps on off-licences to the extent this relates to supermarkets and grocery stores.

¹⁶ The Council's survey results show that respondents have different views about the appropriate off-licence hours for bottle stores as opposed to supermarkets.

¹⁷ See paragraph 2.7 of the Memorandum to the Mayor and Councillors dated 16 July 2013, where the author identifies that if a Council does not have an LAP in place, decisions will be directed by the criteria in s105, the default maximum trading hours, and the more restrictive hours provided in the NRMP. The discretionary power to impose more restrictive licence hours as part of the conditions of the licence has been omitted however.

¹⁸ In addition to Douglas Fairgray, Progressive Enterprises have also commissioned an expert to provide planning advice (Michael Foster) and an expert to provide a literature review of material regarding alcohol-related harm and measures to address alcohol-related harm (Dr Mark Elwood). Progressive Enterprises can provide the Council with a copy of this information on request.

¹⁹ New Zealand Treasury *Regulatory Impact Analysis Handbook* 2009.

- 5.3 Progressive Enterprises supports this decision because the location of supermarkets off-licences is better addressed in a manner that is integrated with the Resource Management Act 1991 and through the district plan. See **Appendix 4** and section 6 below for more detail.

6. OBJECTIVES OF THE DRAFT LAP

- 6.1 Progressive Enterprises seeks that new objectives be included as follows:

Provide an efficient regulatory framework through promoting a decision making framework that is integrated with the district plan and the resource consent and building consent processes.

Ensure that the LAP does not duplicate regulatory controls contained within the district plan.

Facilitate the early processing of licence applications in conjunction with resource consent applications or building consent applications in so far as is possible.

- 6.2 The Council's District Plan is the most appropriate mechanism for controlling the development of new supermarkets within broad areas, proximity and density.
- 6.3 As opposed to bars and bottle stores, supermarkets almost inevitably require resource consent (and so trigger a planning assessment of their specific design), and where they are located adjacent to residential areas often require limited notification. As a result, the RMA is a good tool for managing the effect of new supermarkets.
- 6.4 The primary element of a supermarket business is to sell food and groceries, with the sale of beer and wine making up around 10% of our total supermarket sales. The Act now imposes tight restrictions on what a "grocery store" is, so corner dairies will no longer be able to sell alcohol. Restrictions for supermarkets in the Act in relation to external advertising also mean that the sale of beer and wine is not brought into mind when walking past the premises. Even within supermarkets, the Act now prescribes strong controls on the layout of beer and wine.
- 6.5 We believe that addressing supermarket location through the district plan would be consistent with community feedback.²⁰ Communities will however still be able to have their say on supermarket locations and licensing through:
- (a) District Plan provisions;
 - (b) Resource consent applications, where these are notified, or limited notified; and
 - (c) In relation to licence applications where they meet the test under the Act.

7. DISCRETIONARY CONDITIONS

- 7.1 Policy 3.1.2 contains the discretionary conditions that might be imposed by the DLA or the ARLA as part of the conditions of an off-licence.
- 7.2 Progressive Enterprises **conditionally supports** the discretionary conditions proposed in the Draft LAP, subject to some minor amendments being made to the condition regarding the display of safe drinking messages and material.

²⁰ See Appendix 2, paragraph 1.

- 7.3 Progressive Enterprises already has a Liquor Policy (attached as **Appendix 1A**), and we also have in-store communications which address the sale of beer and wine in our supermarkets. As a national supermarket operator, Progressive Enterprises' advertisements and display material are applied at a national level, so the need to ensure national consistency across its advertisements is essential.
- 7.4 National consistency in its advertising and display material is particularly important for Progressive Enterprises under the new Act, given the stringent restrictions on the promotion of alcohol (and the fact that a breach of these restrictions gives rise to a negative holding under the Act, which can eventually lead to a loss of the off-licence).
- 7.5 For these reasons, Progressive Enterprises seeks that this condition be amended as follows:

"Display of safe drinking messages/material. **The form and content of the messages and material to be displayed is sufficiently flexible so that licensees can display nationally consistent safe drinking messages and material that are consistent with good practice.**"

APPENDIX 1: PROGRESSIVE ENTERPRISES AS A RESPONSIBLE OPERATOR

1. Progressive Enterprises has a Liquor Policy (attached as **Appendix 1A**) and we also have in-store communications which address the sale of beer and wine in our supermarkets.
2. Our policy makes it clear that intoxicated persons are not permitted to enter or remain on the premises. Observing customers tends to be easier in a supermarket environment owing to the fact that it is brightly lit and there is individual interaction at the check-out. This is supported by the extremely small number of off-licence breaches which occur in our supermarkets across New Zealand, despite serving 2.5 million customers every week. Our supermarkets already have extensive CCTV coverage.
3. The supermarket store experience itself promotes the availability of food and non-alcoholic beverages. Under the new Act, supermarkets are not able to display non-alcoholic beverages within the "single area" for beer and wine.
4. In our stores specifically, every sale of beer or wine must be approved by a supervisor, no matter whether the customer is 18 or 80. We have an ID 25 policy which is above and beyond the legal requirement around identification, as well as a policy to request identification where a member of the group looks under 25 and our staff reasonably believes that there is a possibility that beer or wine may be being purchased for this person. We believe most customers are now very aware of what constitutes appropriate ID. Store supervisors will ask for drivers licence, passport or the HANZ card, and no other form of ID is acceptable.
5. It is our company policy not to sell beer or wine that specifically markets to and promotes the consumption of alcohol by young people. We also have a policy of not selling beer or wine below cost.
- 5.1 The Act represents the most significant tightening of alcohol licensing within the last 50 years (or more), as there are a number of additional restrictions imposed on licensees under the Act. Supermarkets are specifically targeted by a number of these restrictions.
 - (a) Supermarkets are the only off-licences that commonly have licence hours outside of 7am to 11pm. Therefore the Act's national default hours affect supermarket licensed hours more than any other type of off-licence;
 - (b) Off-licences are more involved in media advertising than on-licences. From mid-December all off-licences will have significant constraints in how they market beer or wine and advertise discounts. These constraints will not impact on-licences to the same extent;
 - (c) Supermarkets will also have to limit the location and advertising of beer and wine within their supermarket to a single area, reducing the exposure of customers to beer and wine; and
 - (d) The Government is addressing pricing on a national basis and is reviewing whether minimum pricing be introduced.
6. Any present discussion of "status quo" must therefore acknowledge that these constraints are not yet in place. The default provisions of the Act are **not** the status quo and will not be until after 18 December 2013. It is important that the Act is then given time to become established and influence behaviour.

Responsible Service of Alcohol Policy



Our responsibilities:

As a responsible business in New Zealand, Progressive Enterprises recognises obligations to community for the responsible and legal sale of alcohol.

As a retailer of beer and wine, the Company takes its responsibility seriously and aims to be the industry leader in responsible service of these products. The company aims to set a positive example to our customers and to other businesses by complying with and, where appropriate, exceeding legislative requirements.

Our actions:

Progressive Enterprises actively encourages the responsible service of alcohol and staff and management are trained to adhere to all applicable rules and regulations. The penalties for the irresponsible sale of beer and wine by an individual or licensee are severe and so too are the company's internal disciplinary policies.

We don't sell beer and wine below the price we purchased it for

It has been a relatively common assertion that retailers sell beer or wine 'below cost' to gain custom in their stores. In our business, it has been a longstanding policy to not set the regular retail or promotional price of beer or wine below the price we purchased it for*.

ID25

To prevent the sale of beer or wine to anyone under the age of 18 the company has introduced a strict ID25 policy. For every transaction, identification is required if a customer looks under the age of 25 years of age. No proof of age = no sale.

Don't buy it for them

Further, to prevent cases of 'secondary supply', our policy is to request identification for any person in a group where a member of the group looks under the age of 25 and staff member reasonably believes there is a possibility that beer or wine may be being purchased for this person.





At times, the company may need to refuse customers service in order to comply with this policy. While customers may not always be happy when a sale is refused, the company will support the role its staff play in making the right decisions to maintain its commitment as a responsible retailer of beer and wine.

Acceptable forms of ID

Photo identification is the only acceptable form of identification when purchasing beer and wine. We accept, in accordance with New Zealand law, New Zealand photo drivers licence, Passport (NZ or International) and the HANZ photo identification card.

In the event of a foreign identification being presented, the on duty Store Manager may then choose to authorise the transaction if they are satisfied that the person is over the age of 18 years and the identification presented includes a date of birth and a photo identification.

Our role in the community:

Progressive Enterprises believes it has a shared responsibility, along with individuals, governments, families and the community, to prevent harm. Progressive Enterprises encourages and promotes the responsible consumption of alcohol and the company proactively supports information campaigns on responsible drinking.

The company participates openly, honestly and transparently in public policy development in this area to represent the best interests of our business, our employees, our customers and our shareholders.

Progressive Enterprises recognises that each community where the company operates is different and actively encourages our store managers to participate in local liquor accords and forums.

* This excludes one-off markdown prices where individual products may be marked down at the end of a product range or when packaging is damaged etc.

Last reviewed and published in October 2012.



APPENDIX 2: MARKETVIEW DATA

1. We have purchased a national sales dataset²¹ of 53 million eftpos and credit card transactions to show nationwide sales patterns (broken down by hour of the week for the 2012 full year) for each type of licensed outlet, including supermarkets. The results are very informative and are set out in the executive summary.
2. BNZ Marketview grouped stores by their type of business. There are six types of businesses that they provided information on:
 - (a) Supermarkets;
 - (b) Liquor Outlets/bottle stores;
 - (c) Grocery and Specialty Food;
 - (d) Restaurants and Cafes;
 - (e) Taverns, Bars and Clubs; and
 - (f) Accommodation.
3. BNZ Marketview only receives information on the number of transactions, the sale amount and the age of the customer. It does not receive information on the proportion of the sale which relate to alcohol.
4. As you would understand, each of the outlet/store types has a different proportion of their sales that relate to alcohol. More specifically:
 - (a) The primary function of taverns and bottle stores is to sell alcohol, so a relatively high proportion of the BNZ Marketview data relates to alcohol sales.
 - (b) The primary function of supermarkets and restaurants is selling goods or food that is not alcohol, so a relatively low proportion of the BNZ Marketview data relates to alcohol sales.
5. Fortunately the Department of Internal Affairs and Statistics NZ hold figures on each business type's proportion of sales that relate to alcohol. To calculate the amount of alcohol sales for each type of business, Dr Fairgray (Market Economics) applied the information from the Department of Internal Affairs and Statistics NZ. The proportion of alcohol sales as a % of total sales for each business type is as follows:
 - (a) Supermarkets: 7-8% of sales;
 - (b) Liquor Outlets: 97%;
 - (c) Grocery and Specialty Food: 4%;
 - (d) Restaurants and Cafes: 18%;
 - (e) Taverns, Bars and Clubs: 55%; and
 - (f) Accommodation: 12%.

²¹ BNZ Marketview. This information was obtained in June 2013.

APPENDIX 3: QUALIFICATIONS AND EXPERIENCE OF EXPERT WITNESS

DOUGLAS FAIRGRAY

1. My full name is Dr Douglas James Marshall Fairgray. I am a Director of Market Economics Limited, a company I set up in 2001 after seven years as Managing Director of McDermott Fairgray Group. I have over 32 years of consulting and research experience, and I have led over 900 consultancy projects for major commercial and government clients.
2. I have particular expertise in examining how patterns of business and community activity have effect on the core matters under the Resource Management Act 1991 and Local Government Act 2002 regarding economic, social and cultural wellbeing, and urban sustainability. I have been at the forefront of development and application of methodologies to meet the "Evidence Base" requirements of the RMA and LGA, and I have conceptualised and implemented a wide range of models and techniques for commercial and government entities. These capabilities include methods for policy analysis, market studies, demographic and community assessment, social impact and economic assessment.
3. Over the last 15 years, I have had a significant focus on New Zealand's urban economies, and the important contribution of urban spatial form to community wellbeing and enablement, and sustainability. This has been especially through the (Environment) Court process, with a number of important decisions acknowledging the value of my evidence as an expert in economic geography in relation to community amenity, the nature and significance of effects, the core economic and social processes, and the importance of aggregate and cumulative outcomes in determining long term effects. I have done considerable work in regard to the nature and distribution of benefits and costs (the "who benefits, who pays? issue) and the effects of government policies. I am a member of the RMLA, an associate of the NZ Institute of Management, and I also provide lectures to undergraduate geography classes.

APPENDIX 4: PLANNING ISSUES FOR SUPERMARKETS

1. It was clear from the submissions presented to the Select Committee considering the alcohol reform legislation that concerns are usually in regard to a specific type of off-licence, or on-licence, rather than the group as a whole.
2. Supermarkets did not raise the same concerns:
 - (a) The economic viability of supermarkets limits how many can be established within a community.
 - (b) Street views of supermarkets do not portray the sale of beer and wine (discussed above).
 - (c) Supermarkets do not sell hard spirits or RTDs.
 - (d) Supermarkets promote the association between food and beer and wine, which is a valid part of the strategy to foster a more responsible drinking culture and reduce alcohol-related harm.²²
3. Providing growth within the community will require additional and/or expanded supermarkets to support the changed residential densities and changed living patterns.
4. Developing a new supermarket site can take five years and millions of dollars. Grocery stores take less time and cost, but not significantly so. These long lead times can involve delays when securing land parcels, as well as the resource consent and building consent application processes. As a result there is considerable investment into supermarket planning and development prior to an application for an off-licence. Because the capital investment in a supermarket is far higher and the time for consenting and construction is far longer than for bars and bottle stores, the Draft LAP (and the subsequent licensing provisions for the sale of wine and beer attached to them) is an inefficient tool for controlling new supermarket developments.
5. The planning process is subject to lengthy resource consent processes, working closely with local councils at every stage of the development. However, it is only at the end of this process that we can apply for a licence to sell wine and beer in our stores.
6. Issues such as off-licence hours, density and proximity under the Draft LAP, have the potential to impact the economic performance of our business, and in turn, our ability to invest, create jobs and pay wages. When we open a new store we receive many more job applications than we have jobs available.
7. As a major employer and retail investor in the community, we ask that you take into consideration the need for consistency and certainty in the relationship between community input on alcohol planning and district planning for the district in the future. The LAP guidance will be important because it provides signals about potential supermarket locations and enables informed investment decisions to be made.

²² Law Commission Report, Alcohol in Our Lives at para 8.33.

Costs and Benefits of the Draft Local Alcohol Policy (LAP)

Prepared for

Christchurch City Council

Authorship

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Executive Summary

Context

The Sale and Supply of Alcohol Act 2012 (the Act) has ushered in a new regulatory regime to help combat the adverse effects of alcohol. Amongst other things, it enables territorial authorities to adopt a Local Alcohol Policy (LAP). Christchurch City Council is proposing a draft LAP that:

- Restricts the opening hours of off-licensed and on-licensed premises
- Imposes a one-way door system for some inner city bars/taverns/nightclubs
- Restricts the location of new outlets to business zones, and
- Enables various discretionary conditions to be attached to licences. e.g. CCTVs

Purpose of this Report

This report assesses the economic costs and benefits of the draft LAP. Specifically, it analyses the effects of proposed changes to the hours at which alcohol can be sold at bottle stores, supermarkets, pubs, bars, and nightclubs (including the one-way door).

Scope of this Report

Alcohol related harm (ARH) can be divided into chronic and acute. Chronic ARH relates to the long-term effects of prolonged excessive consumption, while acute ARH relates to the immediate effects of episodic binges. This report focuses on acute harm.

Approach to the Analysis

The earthquakes have caused many licensed premises to close, especially in the CBD. With no way to predict when each will reopen (if ever), the resulting uncertainty has precluded a fully-quantified cost benefit analysis. Accordingly, this report adopts a more qualitative approach in which estimated policy-induced consumption changes are translated into various economic costs and benefits.

Extent, Causes, and Risks of ARH

Alcohol causes a number of issues in New Zealand. For instance, on an average day, 52 individuals or groups of people are either driven home or detained in Police custody due to their state of intoxication, and police arrest 340 alleged offenders who show signs of having consumed alcohol prior to offending.¹ In addition, excessive alcohol consumption leads to a number of serious health issues, and can affect relationships with family, friends and the wider community.

Acute ARH is largely a result of our deeply entrenched binge drinking culture, which has been exacerbated by a growing gap between the prices of alcohol sold at off-license and on-license premises. The resulting price differential has fostered a pervasive culture of pre-loading, in which cheaper off-license alcohol is consumed (often quickly) before going out. To understand the risky nature of this, we first need to understand how the body processes alcohol. In simple terms, alcohol is absorbed via the digestive system, where it passes through the liver before entering the bloodstream. Once in our system, it

¹ Ministry of Health (2010) Alcohol Quick Facts. Retrieved from:
[http://www.ndp.govt.nz/moh.nsf/pagescm/7752/\\$File/alcohol-factsheets.pdf](http://www.ndp.govt.nz/moh.nsf/pagescm/7752/$File/alcohol-factsheets.pdf)

stays there for a long time. Moreover, the quicker we drink, the drunker we get and the longer it takes to get sober.

To illustrate this point, consider a 75kg male who consumes 10 drinks between 8pm and 10pm then stops for the night. By the end of the drinking session (10pm), his blood alcohol content (a key indicator of intoxication) will be nearly double the legal driving limit, and will remain above that limit for another five hours (until 3am). Nine hours after he finished drinking (7am) some traces of alcohol are likely to remain in his blood.

While these figures are startling, the issue of acute ARH is not just a result of our drinking culture. In addition, the rate of crime-related ARH depends on the physical convergence in time and space of three factors, namely:

1. A likely offender
2. A suitable target, and
3. The absence of a capable guardian.

Hence, addressing acute ARH depends not only on moderating our drinking behaviours, but also making the places that people drink safer, too. This is where discretionary licence conditions enabled by the LAP may play a role, for instance by increasing the level of surveillance in trouble spots.

Overall, younger people are the most at-risk for acute ARH because they:

- tend to drink more alcohol and are less experienced with its effects,
- are more likely to be out at night when significant harm occurs, and
- are more likely to take risks when under the influence.

Christchurch Local Drinking Habits

To estimate likely policy impacts, we first needed to understand local drinking habits. According to surveys run by Council, people most commonly purchase alcohol at supermarkets and bottle stores and consume it either at home or a friend's place or party. In addition, a number of people (particularly younger people) purchase and consume alcohol at taverns, while a number of people also purchase and consume alcohol at restaurants and cafes.

To better understand local drinking habits, we obtained data on every electronic transaction by Christchurch BNZ customers at bottle stores and taverns both before and after the quakes.² While the data have limits (notably: they exclude all cash transactions and exclude alcohol purchases from supermarkets, cafes and restaurants etc), they do reveal a number of interesting insights. For instance, the data show that:

- Christchurch residents spend significantly more on alcohol now than before the quakes. In fact, bottle store expenditure has increased by 32% per capita, while tavern expenditure has increased by 23% per capita.

² The pre-quake dataset covers the year ended 30 August 2010, while the post-quake dataset covers the year ended 30 June 2013.

- The timing of on-licensed expenditure has shifted. For instance, before the quakes, 90% of tavern expenditure occurred by 1am. After the quakes, 96% occurred by 1am. This is probably because the quakes closed many late night venues (hence reducing opportunities for late night drinking) so people shifted their expenditure/consumption forward to earlier in the evening.
- Conversely, the timing of bottle store expenditure has not changed. Both before and after the quakes, 96% of bottle store expenditure occurs by 9pm.
- Young people spend a lot less per transaction at both bottle stores and taverns, but they transact far more often, and hence spend more overall.
- There is a noticeable gap between the timing of bottle store expenditures and the timing of tavern expenditures, especially for younger people. For instance, on Saturdays, bottle store expenditure by 18 to 24 year olds peaks at 6pm, while tavern expenditure peaks at 11pm.

Practical Implications of the LAP

The LAP aims to reduce ARH, mainly by curbing availability. To examine the stringency of proposed restrictions on opening hours, we compared them to the hours for which licences are currently held and the hours that licensed premises are currently open. The analysis shows that the draft LAP will affect the times at which most supermarkets and bottle stores can sell alcohol, but that effects on taverns will vary considerably. In particular, late night venues will be the worst-hit, while many (largely suburban) taverns will be mostly unaffected.

Literature Review

Next we reviewed the local and international literature. We started with two recent papers by the Ministry of Justice that seek to establish a new fee regime for the alcohol licensing system. These provided some useful insights into the likely drivers of ARH, at least for on-licensed premises. Specifically, the Ministry of Justice papers show that the type of premises, their opening hours and their compliance history are key markers of risk. Of these, compliance history is by far the most important, reflecting the fact that a very small proportion of licensed premises account for a very high share of related offences.

Drilling into specific LAP elements in the academic literature painted a more mixed picture. The most promising element appears to be the proposed reductions in opening hours for on-licensed premises, which seem a potentially fruitful avenue for reducing ARH. Conversely, the academic literature suggests that the proposed one-way door policy will be ineffective and may even have negative effects. Finally, our review found that there is no evidence to support (or oppose) the proposed restrictions on off licenses.

Changes in Consumption

The penultimate step was to estimate possible changes in consumption caused by the LAP, which we analysed in two steps. First, we estimated potential policy-induced consumption changes assuming no behavioural changes. That is to say, we first assumed that consumers did not shift their expenditure patterns in light of the new

trading hours. While highly unlikely, this set an upper bound for the analysis. Then, we re-estimated the changes while explicitly allowing for behavioural change.

To estimate potential changes in consumption while holding expenditure patterns constant, we simply calculated how much alcohol is currently purchased outside the hours that would be permitted by the draft LAP. Then we translated that expenditure into estimates of consumption using data in a recent Ministry of Justice report that showed the average costs of standard drinks at both off-licenses and on-licenses. According to our analysis, the LAP could reduce citywide alcohol consumption by 3.6% assuming that expenditure patterns do not change as a result.

To estimate consumption changes while explicitly allowing for behavioural change, we needed to understand how consumers were likely to react. To this end, we began by reviewing the responses that were given in various local surveys. These seemed to suggest that significant behavioural change could be expected. For instance, a survey run by Hospitality New Zealand asked “If the hours for off-licence sales were reduced, would you still purchase alcohol for the night prior to going out for a night out or would you go to a bar earlier?” 90% said they would just buy their off-licence alcohol earlier, and 10% said they would go out to bars earlier.

Despite the strength of these various survey results, it would be unwise to ground the analysis purely on the basis of them, as actual behaviours can often differ markedly from the responses given to surveys. Consequently, we sought a more concrete basis.

As it happens, the earthquakes themselves provided a perfect natural experiment into the way that people are likely to react to changes in opening hours, at least for on-licences. This is because the quakes had a disproportionate impact on inner city taverns, which accounted for the majority of late-night venues. Thus, the quakes naturally caused a natural reduction in late-night opening hours. This means that, just by comparing the pre-quake and post-quake distributions of tavern expenditure, we could directly observe how consumers might react to the LAP.

The pre- and post-quake comparisons revealed a significant shift in drinking times at on-licensed premises as a result of the quakes, particularly for younger people. For instance, before the quakes, only 62% of tavern expenditure by 18 to 24 years olds occurred by midnight. After the quakes, this share jumped to 80%. The shifts for other age groups were not so dramatic, but were evident nonetheless.

On the basis of these findings, we assumed that 75% of off-licence expenditure and 50% of on-licence expenditure currently outside the opening hours proposed by the LAP would be shifted forward via consumer reactions. Applying this assumption, we estimated that the LAP would reduce citywide alcohol consumption by 1% (having allowed for behavioural change).

Analysis of Costs and Benefits

To analyse potential costs and benefits, we adopted a comprehensive analytical framework recently designed by the European Union to provide a standardised method for measuring the effects of alcohol-related policies.³

Overall, our analysis suggests that economic costs will outweigh benefits because:

- While the international literature has shown that reductions in opening hours can help reduce ARH, reductions in consumption caused by the LAP will be minor and hence so too will any reductions in acute ARH. As a result, policy benefits will be minor.
- At the same time, the policy could have a number of unintended consequences, including undermining the viability of rebuilding licensed premises in the CBD.
- In addition, it will impose additional costs on many licensed premises, and unduly disadvantage a number of very low-risk premises, such as wineries.
- The key issue is that – while very difficult to do within the ambit of a LAP – the policy fails to address the key drivers of acute harm, namely our binge drinking culture coupled with a tendency to pre-load.
- Further, the policy appears too coarse, and may not adequately reflect the relative harm caused by different types of licensed premises. A more fine-grained approach should be considered.
- A significant amount of ARH occurs in the home, and the policy is unlikely to provide much assistance with this. Conversely, regulating the density of outlets in certain areas may have positive effects, but these have not been included.
- There is no evidence to support or oppose the proposed off-licence restrictions. Further, council does not appear to have a strong community mandate for reducing the hours that alcohol can be sold at certain off-licenses, such as supermarkets.
- Because the policy does not (and essentially cannot) target problem drinkers, it is fairly blunt and therefore has the potential to negatively impact a number of law-abiding citizens.

It is also important to note that, even if this analysis did conclude that benefits exceeded costs, this does not necessarily mean that the policy should be adopted. Rather, Council must also satisfy itself and the wider community that the draft LAP is the best way to meet policy objectives. However, this cannot be determined until a thorough examination of all other options has been completed. We therefore recommend that Council take the opportunity to re-examine its options before deciding whether or not to proceed with the LAP.

³ European Commission (2007) Standardizing Measurement of Alcohol Related Troubles

1 Introduction

1.1 Context

The Sale and Supply of Alcohol Act 2012 (the Act) has created a new regulatory regime to help combat the harm caused by the sale and consumption of alcohol. Amongst other things, the Act enables Councils to adopt a Local Alcohol Policy (LAP). In February 2013, Christchurch City Council unanimously agreed to adopt a LAP. This report analyses its economic costs and benefits.

1.2 Summary of the Draft LAP

Christchurch City Council is proposing a draft LAP that:

- Sets maximum opening hours for off-licenses of 9am to 9pm.
- Sets maximum opening hours for most on-licenses of 8am to 1am.
- Defines an area within the central city where the maximum closing time for on-licenses is 3am with a one-way door policy from 1am.
- Restricts the location of new bottle stores and taverns to business zones, and
- Allows a number of discretionary conditions to be attached to licenses e.g. requiring security staff, CCTVs, exterior lighting, queue management.

1.3 LAP Objectives

The main objective of Council's draft LAP is to reduce alcohol related harm (ARH)⁴. This is defined in section 4 of the Act as follows:

"The harm caused by the excessive or inappropriate consumption of alcohol includes —

- (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and*
- (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a)."*

In general, ARH can be divided into chronic and acute. Chronic harm relates to the long-term effects of prolonged excessive alcohol consumption, while acute harm relates to the immediate effects of excessive consumption i.e. binge drinking. This report focuses only on acute harm.

⁴ A secondary objective is "facilitate the return of late-night entertainment venues to the central city."

1.4 Changes Occurring Irrespective of the LAP

Councils are not obliged to adopt a LAP, and several legislative changes are occurring regardless. The following box summarises the nature and timing of these.

Summary of Changes Occurring Under Law

From 19 December 2012:

- The new Alcohol Regulatory and Licensing Authority (ARLA) replaces the Liquor Licensing Authority
- Only interim one-year licences can be issued for new liquor licences. When interim licences expire, holders must apply for a new licence under the criteria of the new laws
- Local authorities can start drafting local alcohol policies (LAPs)

From 18 June 2013:

- All licence applications have to meet new, expanded criteria (eg, whether the licence is likely to increase alcohol-related harm or negatively impact the community)
- All licence applications also are subject to new grounds for objection

From 18 December 2013

- Anyone who supplies alcohol to minors must do so responsibly. The penalty for failing to do so is a fine of up to \$2,000
- Territorial authorities can implement local alcohol policies (LAPs)
- New national maximum trading hours apply
- On-licences, such as bars, will have to provide water, low-alcohol beverages, food and information about safe transport
- Using a fake ID, using someone else's ID and giving or lending an ID to an underage person to buy alcohol becomes an offence
- New offences apply for irresponsible advertising and promotions
- Licences and managers certificates can be cancelled for five years for specified repeat offences
- District Licensing Committees (DLCs) replace District Licensing Agencies. DLCs will decide all applications for new or renewed licences and managers certificates.

1.5 Scope and Purpose of this Report

The purpose of this report is to assess the economic costs and benefits of the draft LAP. Given the limited time available, however this report focuses only on those elements likely to have the greatest impacts. To this end, we note that:

- Most cafés, restaurants and sports clubs will not be significantly affected by the LAP, and are not perceived to be trouble areas for alcohol related harm (ARH). Accordingly, they have been excluded from the analysis.
- The LAP will not have a significant impact on the location of new bottle stores and taverns. Moreover, Council has other instruments such as its District Plan to regulate this, so it too has been ignored.
- While discretionary licence conditions are important, their effects are very difficult to determine. Accordingly, they are not discussed in any detail.

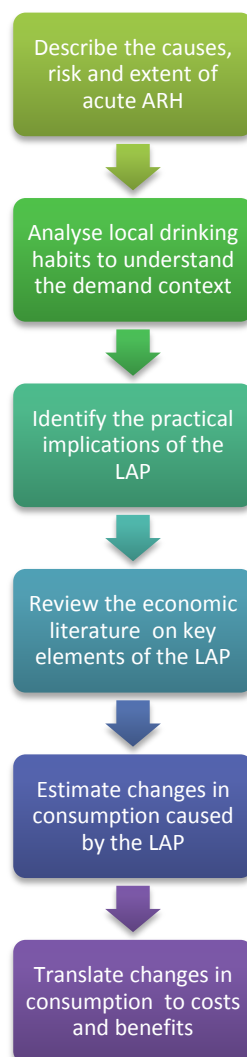
This means that our analysis focuses mainly on the effects of the LAP on the opening hours of supermarkets, bottle stores, bars, taverns, pubs and nightclubs (including the one-way door restriction mooted for parts of the central city).

1.6 Approach to the Analysis

In a traditional cost benefit analysis, the effects of a proposed policy are assessed on a “with and without” basis by comparing the likely future situation with and without the policy. However, the devastating effects of the quakes have created significant uncertainty around the likely future state of the market. For instance, nearly a quarter of licensed taverns are not currently operating, and there is no way to predict when (if ever) each will reopen. In addition, CERA recently signalled a review of the noise categories in the central city used by the Council to guide the location provided for late night licensed premises in the central city.

The resulting uncertainty has precluded a fully-quantified cost benefit analysis, leading this report to adopt a more qualitative approach based on the following steps:

Figure 1: Key Steps in the Analysis



1.7 Frequently Used Terms and Abbreviations

The following table explains commonly-used terms and abbreviations.

Table 1: Commonly Used Terms and their Meanings

Terms	Description
ARH	This stands for Alcohol Related Harm.
Acute ARH	Acute ARH refers to the immediate effects of binges. It forms the focus of this report
BAC	This stands for blood alcohol concentration, and is a common measure of intoxication
DANTE	This stands for <i>Dealing with alcohol-related harm and the night-time economy</i> , and refers to detailed report into LAP-related matters published in Australia in 2012.
LAP	This stands for Local Alcohol Policy, and refers to the draft policy that forms the focus of this report
LCR	This stands for Law Commission Report and refers to the 2009 report titled <i>Alcohol in our Lives: Curbing the harm</i>
NZADS	This stands for the 2007/08 New Zealand Alcohol and Drug Survey
One-way door	A one-way door allows patrons to leave a licensed premises but not enter or re-enter
Taverns	This refers to all pubs, bars, taverns, nightclubs etc
NTE	This stands for Night Time Economy and refers to that part of the economy that operates at night

1.8 Structure of this Report

The remainder of this report is structured as follows:

- **Section 2** provides important background by reviewing the extent, causes and relative risks of acute ARH.
- **Section 3** analyses local drinking habits to determine the demand context within which the policy would be adopted.
- **Section 4** examines the practical implications of the LAP, particularly with respect to proposed changes in opening hours.
- **Section 5** reviews the local and international literature on key elements of the LAP to help determine potential effectiveness.
- **Section 6** estimates potential changes in consumption caused by the LAP.
- **Section 7** assesses the likely costs and benefits of policy-induced consumption changes.
- **Section 8** provides an overall assessment of costs and benefits to reach a final conclusion.

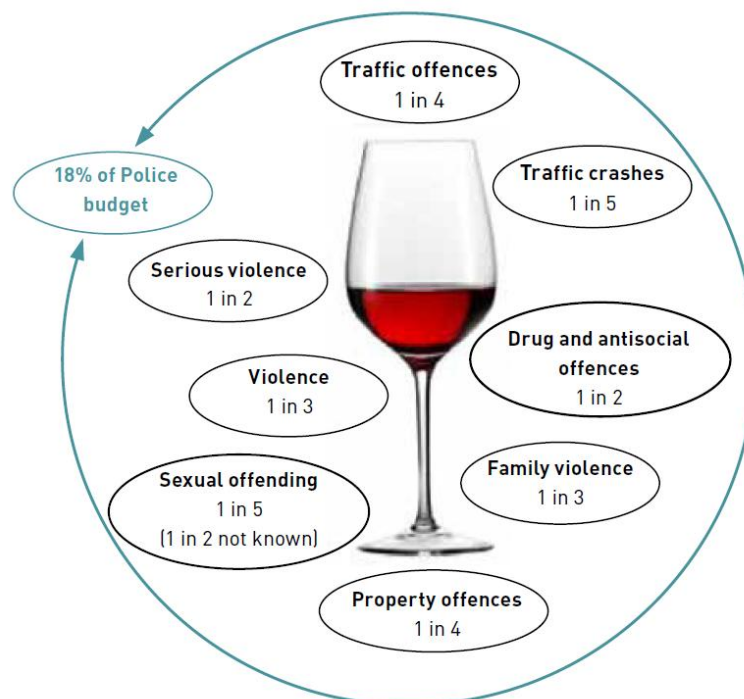
2 Causes, Risks and Extent of Acute ARH

This section reviews the causes and relative risks of acute ARH to provide important context. First, however, it briefly summarises the extent of acute ARH in New Zealand.

2.1 Extent of acute ARH

Alcohol causes a number of issues in New Zealand. For instance, on an average day, 52 individuals or groups of people are either driven home or detained in Police custody due to their state of intoxication, and police arrest 340 alleged offenders who show signs of having consumed alcohol prior to offending.⁵ The following graphic further highlights the extent to which alcohol contributes to a number of serious crimes.

Figure 2: Estimated Contribution of Alcohol to Serious Crimes in New Zealand⁶



In addition, excessive alcohol consumption can lead to a number of serious health issues, and can ruin relationships with family and friends. The list goes on.

2.2 Causes of Acute ARH

There is widespread acceptance that acute ARH is largely caused by binge drinking. In New Zealand, this problem is exacerbated by a pervasive culture of drinking to excess, which some link back to the bygone era of six o'clock closing. For instance, DB breweries described it as following in its submission to the Law Commission:

⁵ Ministry of Health (2010) Alcohol Quick Facts. Retrieved from:

[http://www.ndp.govt.nz/moh.nsf/pagescm/7752/\\$File/alcohol-factsheets.pdf](http://www.ndp.govt.nz/moh.nsf/pagescm/7752/$File/alcohol-factsheets.pdf)

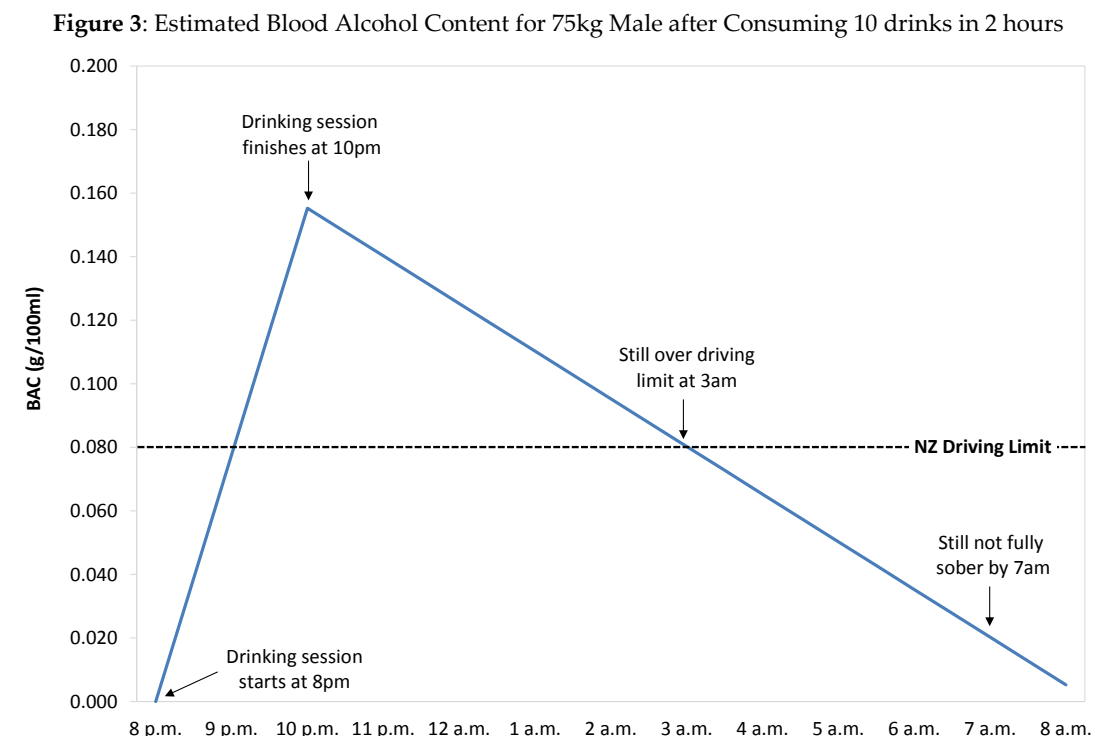
⁶ ibid

“The urgency given to drinking during six o’clock closing possibly created a ‘hangover’ for the following generations with an ongoing focus on drinking as much as possible. Until recently, it was fairly common for people coming of age to be given a yard glass on their 21st.”

In addition, alcohol sold at off-licenses has become more affordable, while alcohol sold at on-licenses has become less affordable.⁷ The resulting price differential has nurtured a culture of “pre-loading”, in which people consume (often large quantities of) off-license alcohol before going out. This is widely acknowledged as one of the key drivers of ARH in Christchurch. For instance, 86% of respondents to the community survey commissioned by Council agreed or strongly agreed that pre-loading was a major cause of alcohol related problems. Submissions by local doctors and police agreed.

To understand the risky nature of drinking large quantities in a short space of time (i.e. pre-loading), we first need to understand how the body processes alcohol. In simple terms, alcohol is absorbed via the digestive system, where it then passes through the liver before entering the bloodstream. Once in our system, it stays there for a long time. Moreover, the quicker we drink, the drunker we get and the longer it takes to get sober.

To illustrate this point, consider the following graph which shows the estimated blood alcohol content (BAC) of a 75kg male after consuming 10 drinks over 2 hours.⁸ In general: the higher the BAC, the higher the level of intoxication and the greater the risk of acute ARH.



⁷ For example, according to the LCR, prices for off-license alcohol products rose by 19% between 2000 and 2008, while weekly earnings rose by 39%. However, the prices for alcoholic beverages in bars and clubs rose by 45%.

⁸ These calculations are based on the widely-used Widmark formula.

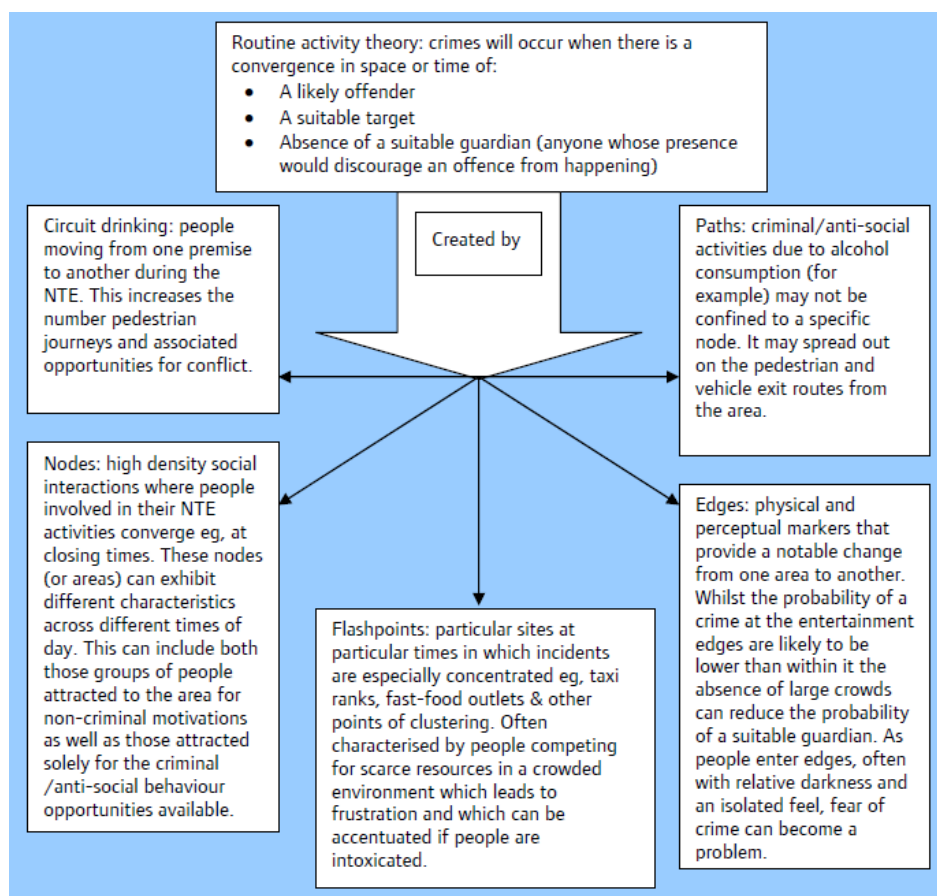
Figure 3 shows that the man's BAC is nearly double the legal driving limit by the end of the two hour drinking session, and remains above the legal limit for another five hours (until 3am). He is not likely to be fully sober again until after 7am (9 hours after the drinking session ended).

Because the BAC is such a strong marker for acute ARH, this example shows that drinking large quantities in a short space of time (i.e. pre-loading) can be dangerous.

Another factor commonly *associated* with ARH is the meteoric rise of ready-to-drinks (RTDs). The amount of RTDs consumed has grown more than 2000% since 1996. While this rampant growth *per se* is not necessarily a cause for concern, it may be in light of the extreme popularity of RTDs with younger people who are less experienced with alcohol and thus more prone to harm. For instance, according to the New Zealand Alcohol and Drug Survey 2007/08, people aged 16 to 17 are thirteen times more likely to drink RTDs than people aged 55 and over.

In addition to the factors above, the rate of ARH occurring in public places at night (i.e. in the night time economy or NTE) depends on a range of environmental factors. These are summarised in the box below, which was reproduced from a recent UK report.⁹

Figure 4: Routine Activity Theory to Identify High-Risk Crime Situations



⁹ Wickham, M., (2012) Alcohol consumption in the night-time economy. Report for Greater London Authority

2.3 Relative Risks by Age

Younger people are at considerably higher risk of causing or experiencing acute ARH. There appears to be several reasons. First, younger people tend to consume more on an average occasion. Second, they are more likely to consume alcohol in the night time economy (NTE), where a significant proportion of acute ARH occurs. Third, having consumed alcohol, younger people are more likely to engage in risky behaviours.

Given these trends, it should come as no surprise that younger people dominate ARH statistics. This is illustrated in the tables below, which show the proportion of respondents to the 2007/08 New Zealand Alcohol and Drug Survey (NZADS) that reported harmful effects due to either (i) their own drinking, or (ii) someone else's.

Table 2: Harmful effects due to **own alcohol use** in last 12 months (NZADS 07/08)

Type of harm/age group	18-24	25-34	35-44	45-54	55-64
Financial Position	12.3%	8.3%	3.7%	2.3%	0.8%
Injuries	14.6%	6.2%	1.6%	1.1%	0.5%
Harm on Work, Study, Employment	7.7%	3.7%	2.6%	1.3%	0.3%
Legal Problems	3.3%	2.1%	0.9%	0.9%	0.4%
Difficulty Learning	2.5%	0.9%	0.5%	0.3%	0.2%
Home Life	8.7%	8.0%	5.3%	3.8%	1.6%

In both tables, across all indicators of harm, younger people report consistently higher rates of ARH than everyone else. It therefore follows that strategies aimed at reducing acute ARH should generally target younger, heavy drinkers to the extent possible.

Table 3: Harmful effects due to **someone else's drinking** in last 12 months (NZADS 07/08)

Type of harm/age group	18-24	25-34	35-44	45-54	55-64
Assault	9.2%	5.0%	4.5%	1.5%	0.9%
Financial position	5.5%	3.9%	3.8%	3.4%	2.3%
Friendship	27.1%	18.1%	14.3%	13.0%	7.8%
Home life	13.9%	10.4%	8.1%	7.5%	4.3%
Vehicle accident	3.0%	1.4%	0.5%	0.8%	0.2%

2.4 Summary

Acute ARH is largely a result of our binge drinking culture coupled with a tendency to pre-load. The dangers of pre-loading are explained by the way that our body processes and metabolises alcohol. In short: the quicker we drink, the drunker we get and the longer it takes to get sober. In addition, the extent of crime-related ARH depends on a range of environmental factors. Hence, addressing acute ARH depends not only on moderating our drinking behaviours, but also making the places that people drink safer too.

Overall, younger people are the most at-risk for acute ARH because they:

- tend to drink more alcohol and are less experienced with its effects,
- are more likely to be out at night when significant harm occurs, and
- are more likely to take risks when under the influence.

3 Christchurch Local Drinking Habits

This section uses a range of data to characterise local drinking habits and therefore understand the demand context within which the policy would apply.

3.1 Places Alcohol is Purchased and Consumed

During the formation of the draft LAP, Council ran a Facebook survey to elicit views on a range of issues, including the places where people purchase and consume alcohol. While the respondents were mainly younger people, a number of people aged 35 and over also responded. **Table 4** shows where respondents usually purchase alcohol, while **Table 5** shows where they usually drink it.

Table 4: Where do you usually **buy** alcohol (pick up to 3)?

Type of Licensed Premises	18-24	25-34	35+	All
Supermarkets	77%	87%	80%	78%
Bottle stores	76%	64%	44%	71%
Pubs or bars	65%	69%	26%	61%
Restaurants or Cafés	14%	24%	36%	18%
Nightclubs	16%	7%	2%	13%
Convenience stores	2%	4%	2%	2%
Other	8%	2%	12%	8%

The results show that supermarkets and bottle stores are the most popular places to purchase alcohol, but that bottle stores tend to be more popular with younger people. This may reflect the greater range of drinks available at bottle stores, including spirits and RTDs. The results also show that pubs, bars and nightclubs are more popular with younger people, while cafes and restaurants are more popular with older people. Interestingly, very few reported regularly purchasing alcohol from convenience stores despite widespread calls to ban such sales.¹⁰

Table 5: Where do you usually **consume** alcohol (pick up to 3)?

Place Drink Most Often	18-24	25-34	35+	All
At home	67%	69%	82%	69%
Family or friend's houses	75%	64%	38%	70%
Pubs and Bars	63%	67%	30%	59%
Nightclubs	19%	11%	4%	17%
Restaurants and Cafés	17%	29%	36%	20%
Other	9%	9%	12%	9%

Table 5 shows that people typically consume alcohol in private dwellings (either their own home, or a family/friend's house). Again, younger people are more likely to drink at taverns, while older people are more likely to drink at cafes and restaurants.

¹⁰ Christchurch City Council (2013) Summary of Results from Facebook survey.

3.2 Expenditure at Bottle Stores and Taverns

To gain a deeper understanding of local drinking habits, we purchased data that captured every electronic transaction by Christchurch BNZ customers at bottle stores and taverns. The data, which report both the number and value of transactions, were broken down into detailed age bands and cover two periods:

1. The pre-quake dataset, which covers the year ended 30 August 2010, and
2. The post-quake dataset, which covers the year ended 30 June 2013.

The following table shows the number of card-holders by age band for each period.

Table 6: Number of BNZ Cardholders by Age Band

Age bracket	Pre-Quake	Post-Quake	Change
0-19	3,870	3,944	1.9%
20-24	6,076	5,680	-6.5%
25-29	6,363	6,229	-2.1%
30-34	6,444	6,082	-5.6%
35-39	7,241	6,504	-10.2%
40-44	7,831	7,630	-2.6%
45-49	8,161	7,843	-3.9%
50-54	7,549	7,870	4.3%
55-59	6,782	6,873	1.3%
60-64	5,882	6,084	3.4%
65-69	4,116	4,537	10.2%
70+	5,333	5,975	12.0%
Total	75,648	75,251	-0.5%

Before presenting some key highlights, an important qualification needs to be made. In particular, these data relate only to electronic transactions by BNZ customers at bottle stores and taverns. Hence they exclude all:

- Electronic transactions by non-BNZ customers,
- Cash transactions by BNZ and non-BNZ customers, and
- Cash and electronic transactions at supermarkets, cafes and restaurants etc.¹¹

As a result, while these data provide critical insights into local expenditure habits, they should not be used to try and infer total expenditure on alcohol in Christchurch city. Total expenditure will be much higher than these figures suggest.

On that basis, Table 7 shows inflation-adjusted pre- and post-quake expenditure per cardholder.

¹¹ Ideally, we would have liked to also analyse alcohol expenditure across all licensed premises. However, this was not possible because the BNZ data does not provide any way to distinguish transactions that include alcohol from those that do not. Accordingly, there was no robust way to determine which transactions at supermarkets, cafés and restaurants etc included alcohol, so they were excluded from the analysis.

Table 7: Inflation-Adjusted Annual Expenditure per Cardholder

Age	Bottle Stores			Taverns			Total Expenditure		
	Pre	Post	Change	Pre	Post	Change	Pre	Post	Change
20-24	\$135	\$166	23%	\$161	\$170	5%	\$296	\$335	13%
25-29	\$86	\$144	68%	\$128	\$178	39%	\$214	\$322	51%
30-34	\$77	\$123	59%	\$96	\$142	48%	\$173	\$264	53%
35-39	\$76	\$108	42%	\$83	\$88	7%	\$159	\$196	23%
40-44	\$86	\$115	34%	\$71	\$95	34%	\$156	\$210	34%
45-49	\$92	\$108	17%	\$78	\$87	11%	\$170	\$195	14%
50-54	\$80	\$108	35%	\$68	\$92	35%	\$147	\$199	35%
55-59	\$69	\$91	31%	\$63	\$88	40%	\$132	\$178	35%
60-64	\$55	\$79	45%	\$41	\$60	49%	\$95	\$140	47%
65-69	\$62	\$76	22%	\$40	\$52	30%	\$102	\$128	25%
70+	\$77	\$77	-1%	\$26	\$39	47%	\$104	\$115	11%
Total	\$82	\$108	32%	\$78	\$97	23%	\$160	\$204	28%

The results in Table 7 demonstrate large increases in expenditure, which are in stark contrast to both the national trend¹² and also responses to the community survey, where 69% of people claimed that they drink the same now as they did before the quakes. However, a number of articles have cited increased alcohol consumption since the quakes,¹³ and it is common for people to under-report alcohol consumption in surveys.

Figure 6 provides more information on pre- and post-quake bottle store transactions, while Figure 7 shows the corresponding information for taverns.

The graphs below reveal a number of interesting insights. For instance, they show that:

- The quakes have caused massive increases in expenditure for most age groups.
- These increases are a direct result of more transactions, not an increase in average expenditure per transaction.
- Young people spend a lot less per transaction at bottle stores and taverns, but they transact far more often than other people, so spend more overall.
- The amount that is spent per transaction at bottle stores and taverns grows at a surprisingly linear rate as people age. This does not necessarily mean that older people purchase greater quantities of alcohol per transaction. Rather, they may just be willing to buy more expensive, better quality beverages.

¹² For instance, the amount of alcohol available for consumption actually fell between 2010 and 2012.

¹³ See, for example, NZ Herald (2012) Depression, stress and anxiety in post-quake Christchurch.

Retrieved from http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10842153 or Adamson, S., Fanselow-Brown, P., Prince, C., Prosser, A., Snell, D., & Vertue, F. (2012) The Christchurch Earthquakes and Ongoing Stress. Christchurch Psychology. Retrieved from <http://www.christchurchpsychology.co.nz/news-and-views/christchurch-earthquakes-ongoing-stress/>

Figure 5: Annual Bottle Store Expenditure Profiles by Age

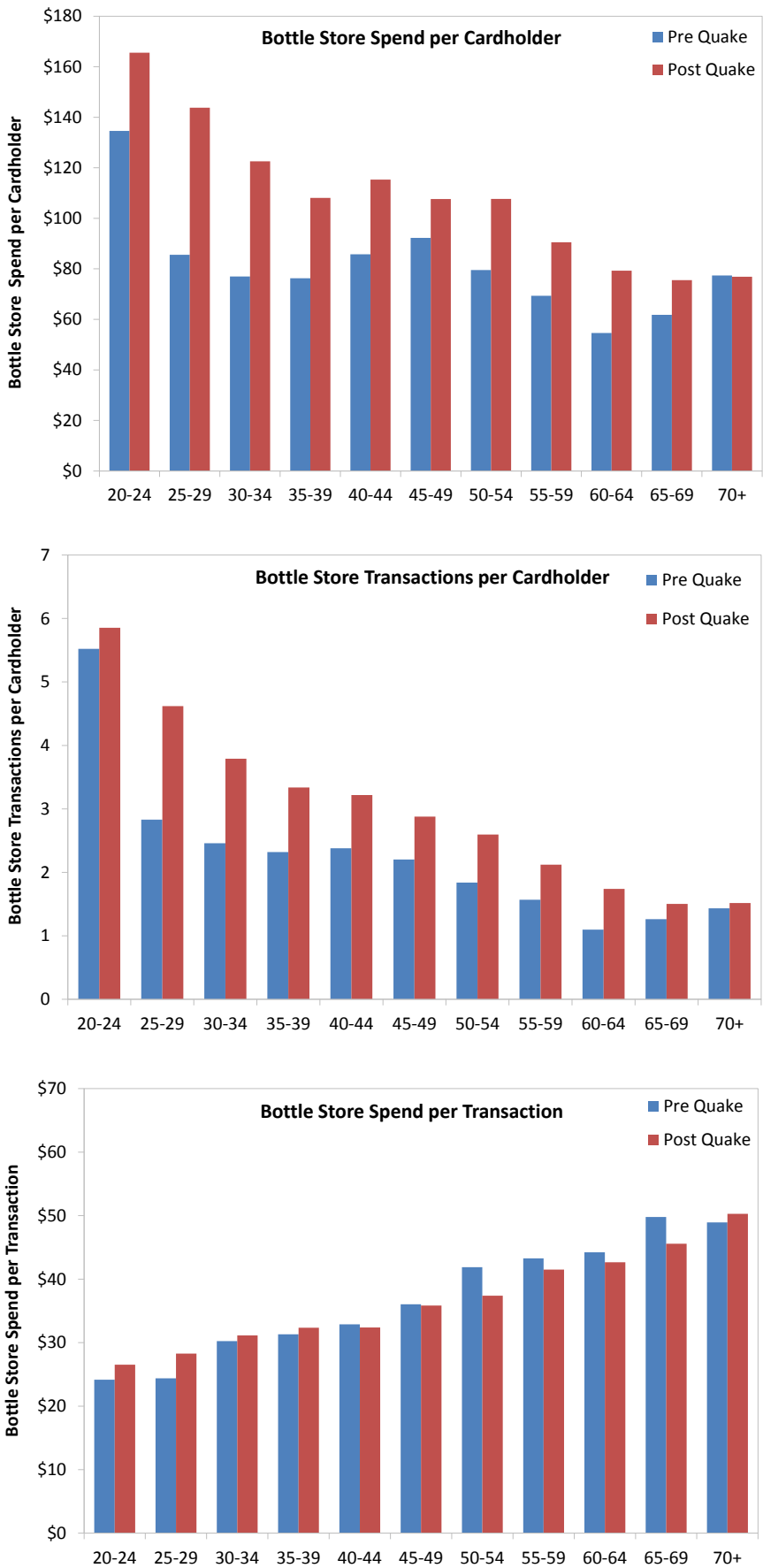
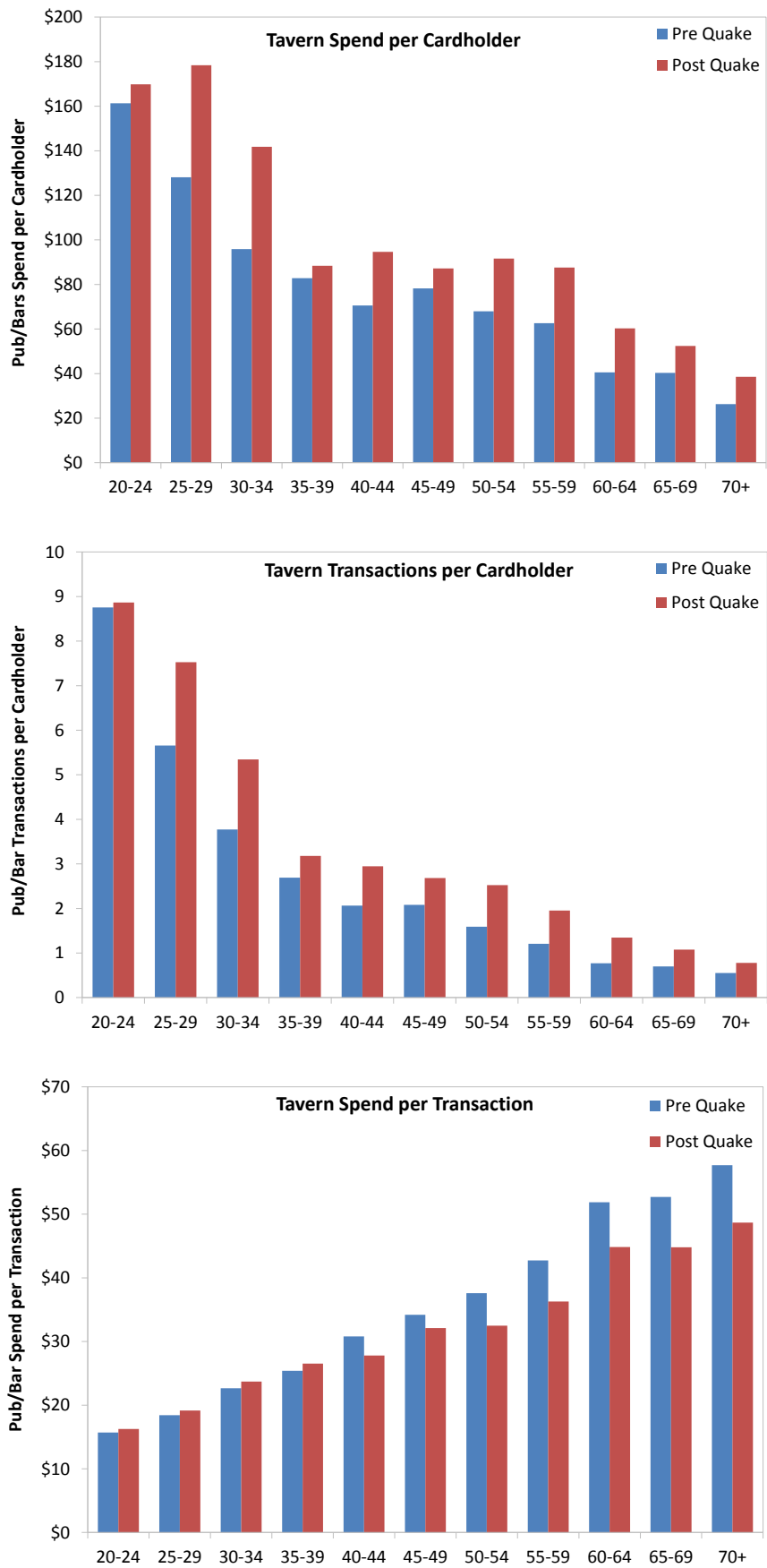


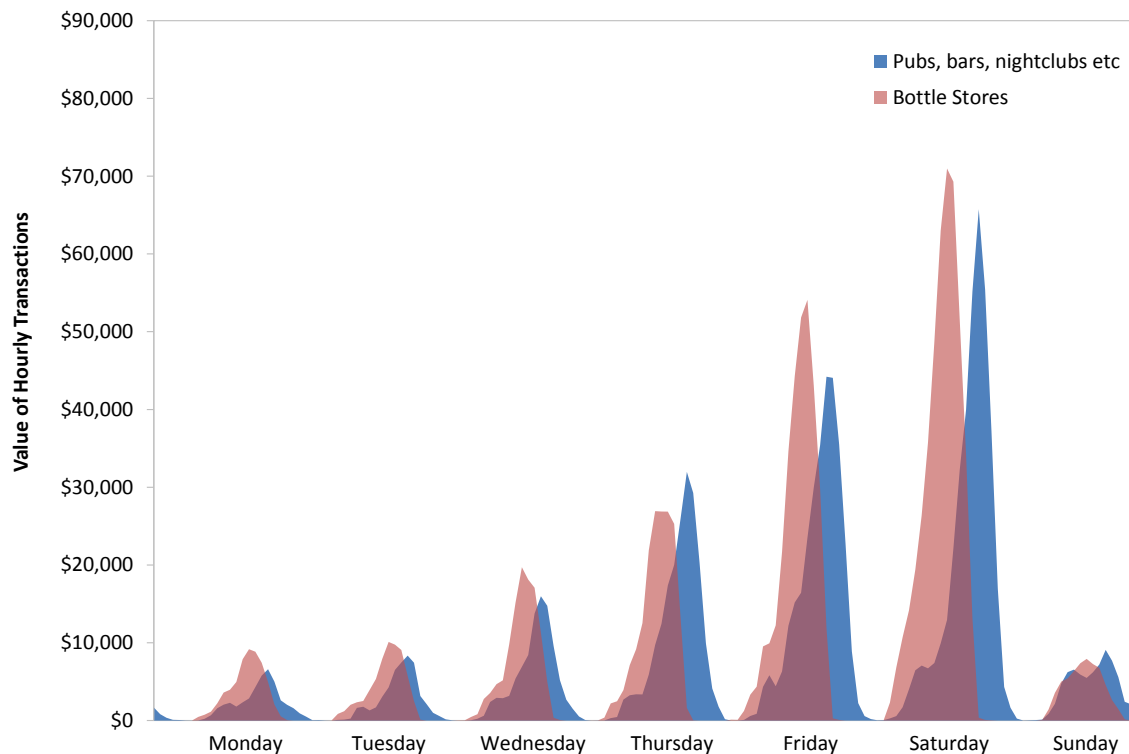
Figure 6: Annual Tavern Expenditure Profiles by Age



3.3 Expenditure Habits of Younger People (18 to 24)

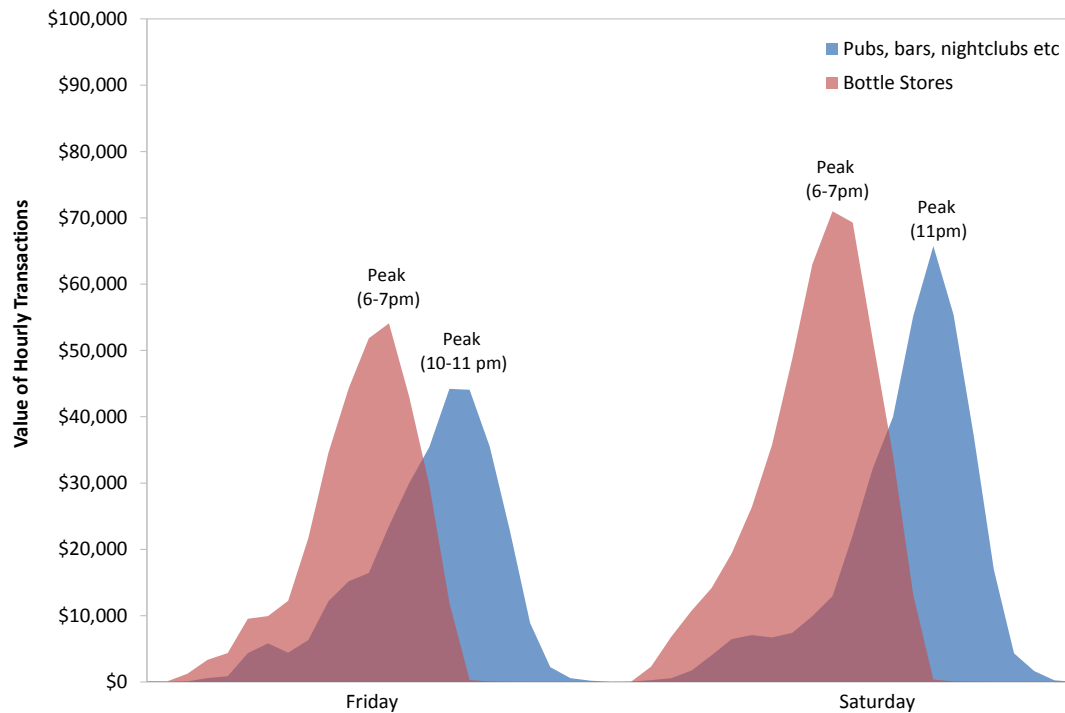
While the general analysis above is of some interest, it is younger people who create the biggest issues in terms of acute ARH, and hence it is their drinking and expenditure habits that are of greatest interest here. We therefore now analyse how alcohol expenditure by younger people (18 to 24) unfolds during a typical week. This is shown in Figure 7, where the red area represents expenditure at bottle store, and the blue area represents expenditure at taverns.

Figure 7: Weekly Profile of Expenditure for 18 to 24 year olds (Post Quake)



This graph shows that off-license and on-license expenditures both rise quickly throughout the week, before reaching their peak on Saturday night only to fall away rapidly on Sunday. It also shows that, on Friday and Saturday nights, there is a noticeable gap between the peak in bottle store sales and the peak in expenditure at taverns. While some of this will simply reflect the fact that off-licenses generally close earlier than on-licenses, it is also likely to be a direct reflection of pre-loading. To take a closer look, we now zoom in to look just at the 48 hour period from 7am Friday to 7am Sunday.

The graph below confirms that younger people purchase alcohol from bottle shops much earlier than from taverns. In fact, on Saturdays, their bottle store expenditure peaks at 6pm, while their tavern expenditure peaks at 11pm.

Figure 8: Expenditure for 18 to 24 year olds from 7am Friday to 7am Sunday (Post Quake)

3.4 Summary

This section has briefly analysed local drinking habits and found that:

- Most people purchase alcohol from supermarkets or bottle stores, and consume it at a private dwelling.
- A number of people (particularly younger people) also purchase and consume alcohol at taverns.
- Local alcohol expenditure has increased dramatically after the quakes.
- This is a result of more transactions, not an increase in spend per transaction.
- Young people spend a lot less per transaction at bottle stores and taverns, but they transact far more often, and therefore spend more overall.
- The data for younger people shows potential evidence of pre-loading, because expenditure at bottle stores tends to occur much earlier in the day/night than expenditure at taverns.

4 Practical Implications of the LAP

This section explores the practical implications of the LAP.

4.1 Introduction

The ultimate objective of the draft LAP is to reduce alcohol related harm (ARH) through a variety of means. Of these, the most accessible from an analytical perspective are the proposed restrictions in opening hours. Indeed, while other facets – such as discretionary conditions – are likely to have important impacts on ARH, they do not lend themselves easily to analysis. We therefore restrict our attention to opening hours.

4.2 Approach

To understand how the proposed changes in opening hours might affect the various types of licensed premises, we constructed graphs comparing them to the hours for which licences currently exist. In addition, we overlaid the restrictions to opening hours that will apply by default under the new Act near the end of the year. We start with supermarkets.

4.3 Restrictions on Hours of Alcohol Sales for Supermarkets

Figure 9 shows the impacts of the proposed LAP on the hours that most supermarkets will be able to sell alcohol. The green bars shows the hours for which supermarkets are currently licensed, while the blue bars show their current opening hours (according to their websites as at 15 July, 2013). The shaded grey areas on the left and right show the restrictions that will apply under the Act from 18 December 2013 regardless.

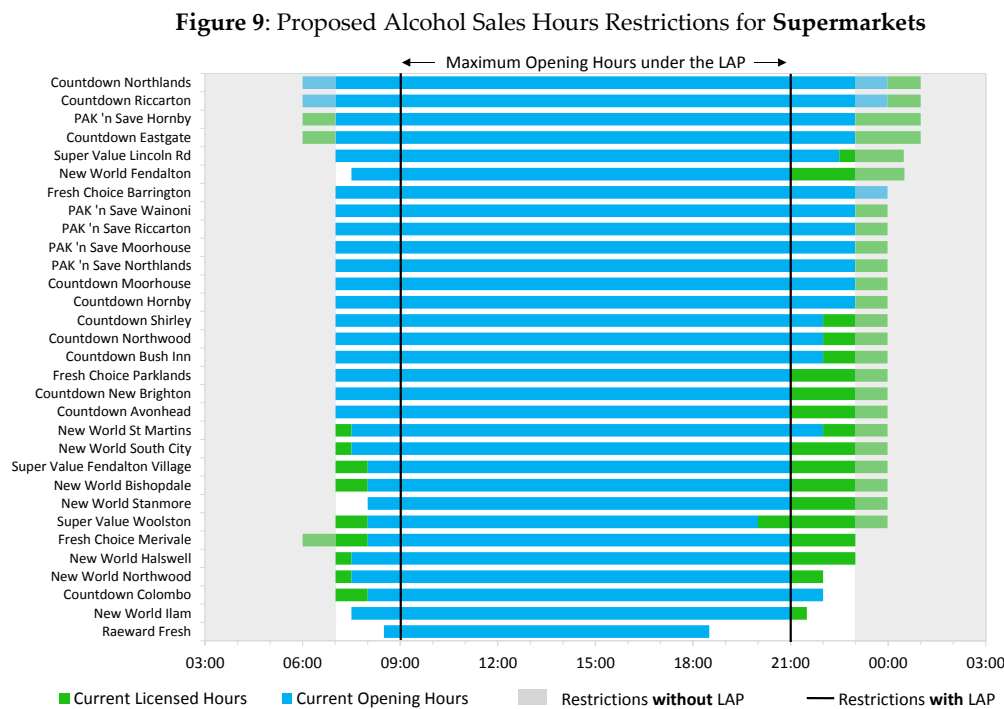


Figure 9 shows that the proposed LAP will have a fairly significant impact on the hours of alcohol trading for supermarkets. This is because all supermarkets currently open before 9am (the proposed start time for supermarket alcohol sales) and many remain open beyond 9pm (the proposed end time for supermarket alcohol sales).

4.4 Restrictions on Opening Hours for Bottle Stores

Figure 10 shows the situation for bottle stores. Again, the green bars represent licensed hours, and the blue bars current opening hours. Please note, however that this is only a sample of bottle stores, as the opening hours for many were not readily identifiable. As a result, this graph should be interpreted only as indicative.

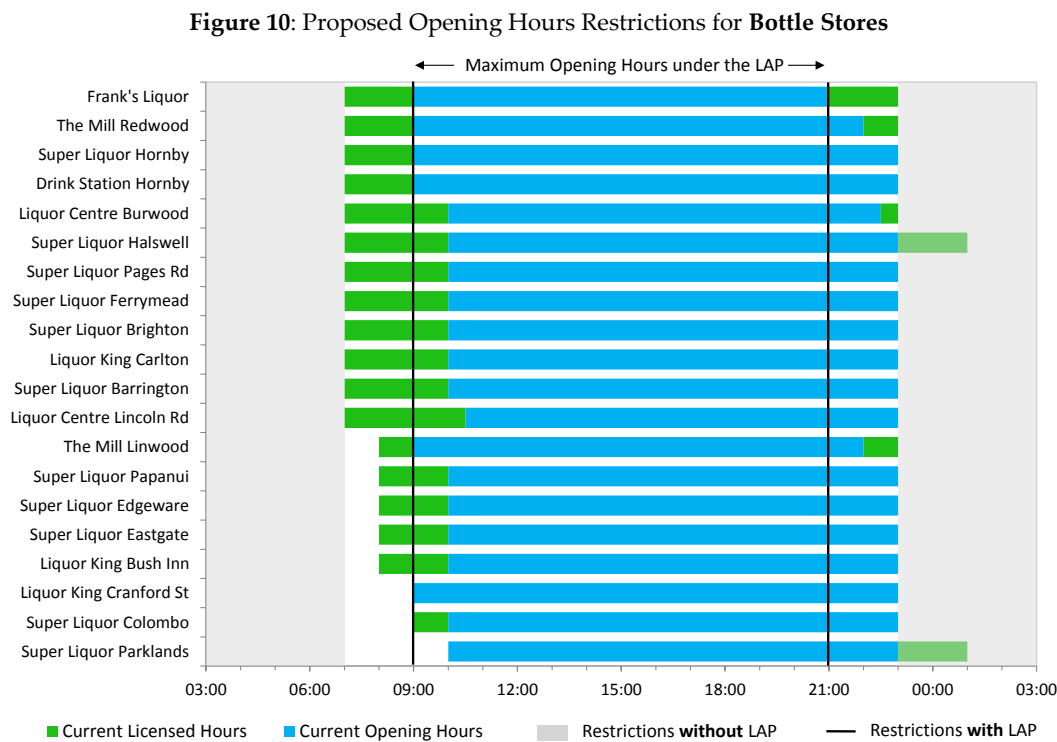


Figure 10 shows that the LAP is likely to affect bottle stores and supermarkets differently. This is because, while all supermarkets are currently open before 9am, none of the bottle stores in our sample were. Hence the start time of 9am is likely to affect only supermarkets. Conversely, all the bottle stores in our sample (bar one) remain open after 9pm, while not all of the supermarkets do. Hence, the proposed maximum time of 9pm may have a greater impact on bottle stores than supermarkets.

4.5 Restrictions on Opening Hours for Taverns

The following graphs show the impacts of the draft LAP on the opening hours for taverns inside category A area (which will have a 3am closing subject to a one-way door from 1am).

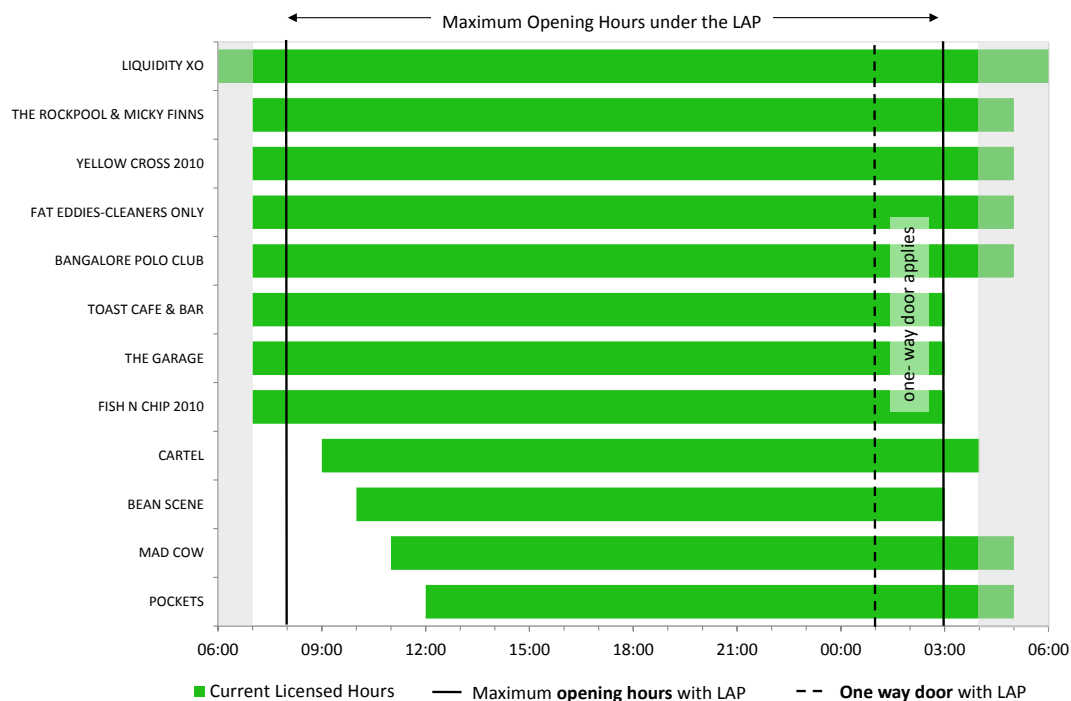
Figure 11: Proposed Opening Hours Restrictions for Category A Taverns

Figure 11 shows that there are 12 taverns inside the category A area, some of which are not currently operating. Most are licensed from 7am, an hour earlier than the proposed opening time of 8am. All will be affected by the proposed reduced closing time and one-way door. Two-thirds are currently licensed to trade beyond 3am, with the rest all licensed until 3am. Those that cater to the very late night crowd will be worst affected.

For taverns outside the category A area, which will have to close by 1am, we note:

- 58% (110 of 190) will not be affected by the earlier closing time as they are currently only licensed until 1am.
- For the other 42% (80 taverns), three-quarters are currently licensed until 3am or later. Hence they will potentially be affected.

4.6 Summary

This section has examined the stringency of proposed restrictions on opening hours by comparing them to the hours for which licences are currently held and the hours that licensed premises are currently open (where known and applicable). The analysis shows that the draft LAP will affect the times at which most supermarkets and bottle stores can sell alcohol, but that effects on taverns will vary considerably. In particular, late night venues will be the worst-hit, while some taverns will be unaffected.

5 Literature Review

This section reviews the relevant literature. First, it reviews two recent Ministry of Justice papers on a new fee regime (the issues report and public consultation report). Then, it reviews the academic literature to examine specific issues in more detail.

5.1 Review of Ministry of Justice Reports

In June 2013, the Ministry of Justice released two reports on establishing a new fee regime for the alcohol licensing system. One was a more technical issues paper, and the other a public consultation paper. Both are important, and together they provide a useful overview of the relative risks posed by different types of licensed premises. We start with the issues paper.

The purpose of the issues paper is to “review the available evidence on the relationship between the characteristics of licensed premises and alcohol-related harm in order to determine appropriate risk factors in the New Zealand context for setting alcohol licensing fees.”¹⁴ Some key findings of the research were that:

- 15% of alcohol-related offences in the past three financial years are linked to on-licences or club-licence premises whilst 45% of alcohol-related offences are linked to home or private residences and 14% are linked to public places.
- High level time profile analysis suggests that the peak times for alcohol-related harm are between 12am and 2am.
- The majority of alcohol (about 76%) is purchased from off-licence premises, with most alcohol purchased from bottle stores or supermarkets.
- A very small minority of on-licensed premises was responsible for an extremely high share of alcohol related offences. In fact, the 30 worst on-licensed premises of 7,629 (0.4%) accounted for 21% of total alcohol attributable offences.

One of the key tasks was to assess the relationship between the characteristics of licensed premises and the rate of ARH. Due to difficulties establishing direct causal links with off-licences, however, the analysis was restricted to only on-licences. While several of the key risk factors identified in the international literature could not be included due to data limitations, the results of the analysis showed that the key cost/risk factors for on-licenses in New Zealand were:

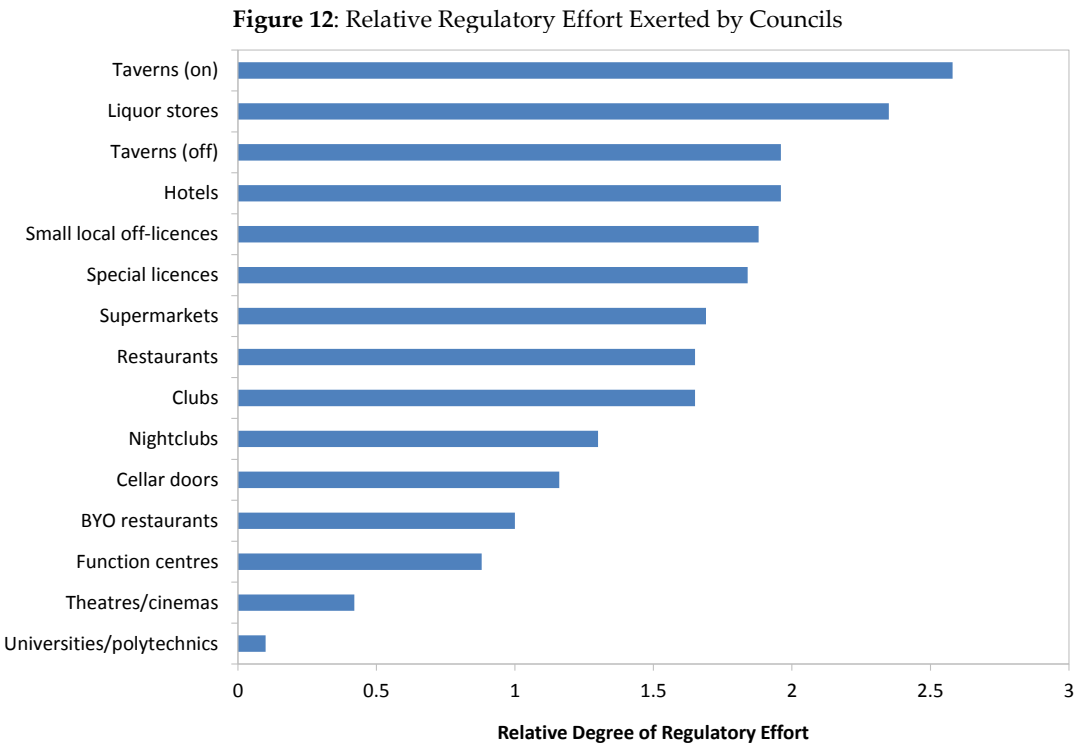
- Licence category (especially taverns, nightclubs, adult premises, hotels, function centres)
- Late closing (after 2am)
- Compliance history (any enforcement actions)
- Gaming machines (10+ machines)

¹⁴ Ministry of Justice (2013) Risk-based licensing fees: Identifying risk factors for the New Zealand context.

According to the report:

These factors are all correlated (to a statistically significant level) with attributable alcohol related offences. It should be noted, however, that there are a number of limitations with the data upon which the analysis is based. In particular, the data do not provide information about the purchase and consumption of alcohol from off licenses, including whether an offender purchased and consumed alcohol from an off licence prior to offending. The results of the analysis should therefore be treated with caution, since they do not necessarily explain which parts of the alcohol supply industry are contributing to harm in any particular incident.

The paper also surveyed the regulatory effort exerted by Councils to manage different types of licensed premises. The following graph shows the results.



The public consultation paper sought to distil the key lessons from the issues paper into a non-technical document accessible to a wider audience. It proposed a specific fee regime for which feedback was sought. It identified a preferred cost/risk-based fee framework that it describes as “a pragmatic and simple approach to establishing fees that would relate reasonably well to the risks and costs created by various licensed premises.” The following diagram, which has been reproduced from the report, shows this framework:

Figure 13: Proposed Cost/Risk Category Framework for Alcohol Licences

Type of licensed premises	Weighting		Latest closing / alcohol sales time	Weighting		Number of enforcements in last three years	Weighting
Liquor store, Supermarket, Grocery off-licence	15		Before 1am	0		None	0
Night clubs, taverns, adult premises, "class 1 restaurant" ¹	15	+	1.01 - 2am	1	+	1 to 2	10
Taverns –off licence	10		2.01 - 3am	3		3 or more	20
Hotels, function centres, "class 1 clubs" ² , "class 2 restaurants" ¹ , universities /polytechnics	10		3.01 - 7am	5			
Remote sales, "class 2 clubs" ² , "class 3 restaurants" ¹ , other	5		24 hours	5			
Theatres/cinemas, wine cellar doors, BYO restaurants, "class 3 clubs" ²	2						

The main implications of this framework appear to be that:

- There are significant, systematic differences between the relative risks posed by different types of licensed premises irrespective of their opening hours. For instance, BYO restaurants have a base score of 2, while supermarkets and bottle stores have baseline values of 15.
- While closing hours have some impact on risk, these pale in comparison to the effects of different licence types. For instance, a very late closing restaurant is deemed to have a much lower risk than an early closing bar.
- Above all, compliance history appears to be the greatest determinant of alcohol related harm. This reinforces the earlier finding that a very small proportion of premises account for an extraordinarily large share of harm.

5.2 Review of Academic Literature

5.2.1 Introductory Comments

We now turn our attention to the academic literature to take a closer look at particular elements of the LAP. However, before we do, some important qualifications seem warranted. These are described below.

First, it is important to note that there is no peer-reviewed New Zealand literature on the effects of reductions in trading hours.¹⁵ Virtually all the literature cited in New

¹⁵ SHORE & Whariki Research Centre (2012) An Assessment of Data Quality for Examining Alcohol-Related Issues in the Queenstown Lakes District. For ALAC.

Zealand is sourced from overseas. While this is fairly common practice, drawing conclusions on the basis of international literature creates an onus to prove that important social, cultural, political, and economic differences have been properly accounted for. Seldom is this done, however, casting some doubt over the applicability of the results.

For instance, a restriction in tavern trading hours in a country with only marginal differences between off-license and on-license beverage prices is more likely to see people going out to taverns earlier than in New Zealand, where the price differential is vast. Moreover, the effects of a restriction in tavern trading hours in a country with a relatively temperate drinking culture is unlikely to be insightful for New Zealand, where excessive binge drinking is widespread. As a result, studies conducted overseas need to be interpreted in their specific contexts to ensure the results are relevant here.

This point was alluded to in the literature review prepared by Council. For instance, the following excerpt – which relates to reducing crime in the NTE - appears on page 363 of the May agenda item:

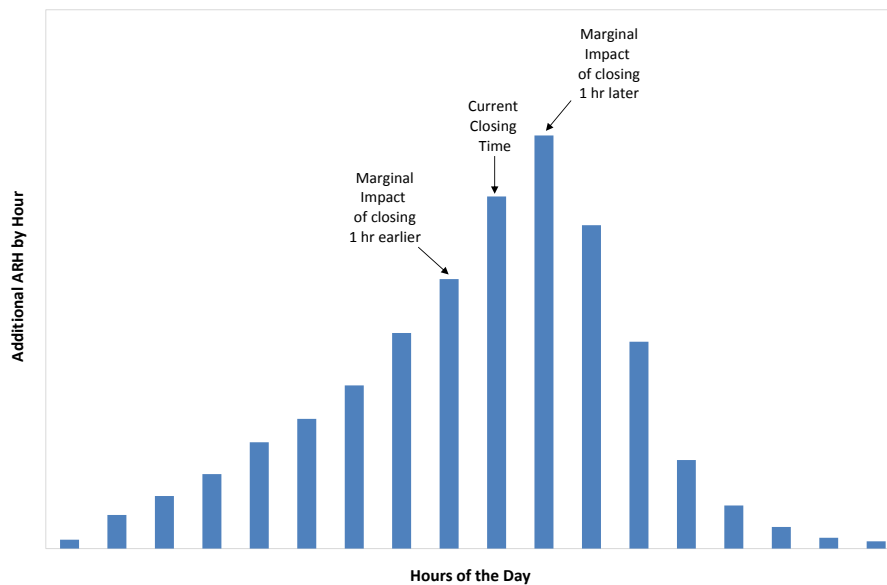
“Matthews (2010) looked at the legislative, policy, regulatory, and precinct management systems used in large complex global cities to manage the night time economy and reduce crime. Matthews present her findings by city as she wanted to understand the interplay between policy, legislation, compliance, economic diversity, and precinct management within each city.”

This passage clearly highlights the need to carefully account for contextual differences, however such critical filtering is often overlooked or ignored in the literature.

Second, not only is virtually all research from overseas, but most of that literature relates to *extensions* in trading hours, not restrictions. For instance, section 9 of the LCR deals with licensing hours and notes:

“The trend towards liberalisation of trading hours has been mirrored in many other countries, as has the concern about resulting alcohol-related harm. This has prompted research in recent years into the effects of extended trading hours.”

While it may seem intuitive to infer the potential effects of reductions in licensed hours from studies into extensions, this is valid only if the hourly rates of ARH remain constant. Otherwise, the marginal effects of an increase in hours may differ quite markedly from a corresponding decrease. The following stylised diagram elaborates.

Figure 14: Asymmetric Damage Function and Marginal Impacts of Earlier/Later Closing

As noted earlier, rates of ARH can vary significantly from one hour to the next, so the assumption of constant harm is unlikely to be satisfied. Consequently, studies into extensions may not be useful predictors of the effects of restrictions, and vice versa.

A recent report for Queenstown Lakes District Council also noted the potential for studies into extensions to be distorted by self-selection bias.¹⁶ This is because extensions in trading hours are not mandatory, and the clientele of premises that took up the opportunity may differ from those of premises that did not. As a result, the observed impacts may not be representative of the bigger picture.

Third, many studies into opening hours (whether extensions or restrictions) relate to much larger changes in licensed hours than those proposed by the LAP. For instance, the LCR refers to a report in Brazil where on-licensed premises that were previously trading 24 hours a day were required to shut by 11pm each night. Reportedly, this reduced the murder rate by nine per month. Notwithstanding the fact that murder rates in Brazil are at least 20 times higher than New Zealand – questioning the likely relevance of the study in any case – the effect of the LAP on opening hours is much less.

Fourth, the analytical methods used in some studies may lack scientific rigour. This was one of the points made in a comprehensive 2012 report from Australia called *Dealing with alcohol-related harm and the night-time economy*.¹⁷ The report, which spans 212 pages, provides one of the most detailed analyses of the topic to date and notes the following:

“A very common problem when introducing new programs or strategies into a community setting is being able to determine which intervention is having which effect. Typically, communities use a raft of different measures to try to deal with the problems they are facing.

¹⁶ Ibid.

¹⁷ National Drug Law Enforcement Research Fund (2012) *Dealing with alcohol-related harm and the night-time economy*.

This makes evaluation of such programs or strategies very difficult.

Further, many measures commonly deployed (such as increased police patrols in an area) are temporary making it almost impossible to form judgement about their effectiveness in terms of measurable outcomes.

It may also be that factors from outside a local community may affect problems in and around licensed venues. Anecdotal reports suggest three recent changes in national policy might affect the prevalence and nature of alcohol-related problems in the community: (i) The smoking ban in public places introduced in 2007, (ii) the 'alcopops tax', and (iii) recent changes to motor vehicle licensing conditions"

Then, noting that considerable experimentation to reduce ARH had occurred in Geelong and Newcastle, it states:

However, only limited, ad hoc documentation and analysis has been conducted, leaving a considerable gap of systematic, evidence-based analysis. This project aims to provide evidence-based knowledge about the implementation and impact of innovative local initiatives directed at alcohol-related harms.

Thus, while the literature can provide some useful insights, caution must be exercised when determining the potential implications of it for the LAP.

5.2.2 Opening Hours for On-Licensed Premises

Having set the scene, we now review the international literature on changes in the licensed hours. We start with studies into extensions of opening hours.

As noted by most researchers, extensions of opening hours for on-licensed premises are likely to lead to increased acute ARH, both in terms of crime and violence. Table 8 which spans two pages, summarises the key literature on the effects of extensions in opening hours on the rates of alcohol-related violence. It has been adapted from a 2013 study by Humphreys et al.

To summarise – of the 19 studies reviewed, eight reported increases in violence, eight reported no change, and three reported decreases as a result of extensions to trading hours. Curiously, many of the results summarised in this table directly contradict one another. This can be seen by comparing the result of the studies marked with an asterisk, which all evaluated the impact of the licensing Act (2003) in the UK. As we can see, many conclude that the policy had positive impacts, while many conclude the opposite. Clearly, there is no strong consensus about the impacts of extensions on the rate of alcohol-related violence. Indeed, more than half the studies found that the rate of violence stayed the same or decreased as result of extensions.

We now review studies on restrictions in the opening hours of on-licensed premises. These are shown in Table 9. Unlike studies into extensions where the results were mixed, all four studies into restrictions reported decreases in violence. While the underlying sample size is small, this is certainly more encouraging.

Table 8: Summary of Evaluations of **Extensions to Trading Hours** (Adapted from Humphrey et al 2013)

Study	Study Design	Unit(s) of Analysis	Data Source	Outcome Measures	Main Findings	Peer reviewed	Directional change in violence
Chikritzhs & Stockwell (2006)	Time series analysis of extended trading permits for licensed hotels.	Perth, Australia	Police: recorded crime data	Impaired drivers involved in road crashes	Extended trading hours were consistent with increased levels of impaired driver road crashes and alcohol consumption.	Unknown	↑
Vingilis et al. (2005)	Interrupted time series of extended service hours from 1am to 2am	Ontario, New York, Michigan	Traffic fatalities	Total and alcohol-related traffic fatalities	Datasets suggest little impact on BAC positive fatalities with the extension of closing hours.	Unknown	↔
Vingilis et al. (2006)	Comparison of city-regions.	Ontario and Michigan	Traffic fatalities	Motor vehicle casualties between 11pm and 3am.	Significant increase in casualties after drinking hours were extended in Ontario.	Unknown	↑
Vingilis et al. (2007)	Interrupted time series of extended service hours.	Ontario.	Ontario Trauma Registry	Motor-vehicle collision (MVC) and other injuries.	Impact on non-MVC injuries, but no effect on MVC injuries.	Unknown	↔
Duffy et al., (1996)	Before-after, control region.	Regional, England and Wales	Police: recorded crime data	Violent crime	Non-significant increase in recorded violent crime 15.5% (95% CI:14.0%, 17.0%).	Yes	↔
Ragnardottir et al., (2002)	Before-after, no comparison	City centre, Reykjavik, Iceland.	Emergency department attendances	Weekend evening attendances	Change in total attendances (+31%), change on evaluation nights (+31%), change on weekends (+20%), change on weekdays (-2%). Significance tests not reported.	No	↑
Chikritzhs et al., (2002)	Interrupted time series design	188 Hotels in Perth, Aus.	Police: recorded crime data	Violent assault, Alcohol consumption.	Significant(p<.01) increase in violent assault in the treatment area (54.5%) versus comparison areas (18.7%).Coincided with measured increases in purchase of high-strength alcohol.	Yes	↑
*Bellis et al., (2006)	Before and after, no comparison.	Regional Unit: Wirral	Emergency department: A&E admissions	Violent assault	Significant (p<.001) decrease in violent assault compared to a pooled before period. Significant decrease in violent assault compared to the previous year.	No	↓
*Babb (2007)	Before and after, no comparison.	a) National Unit: Pooled results for 30 police forces, b) Subset of City Centre Units: 18 Police Forces	Police: recorded crime data	More serious violence, less serious wounding, less serious wounding in city centres (subset), assault with no injury (pooled & subset), harassment (pooled & subset), criminal damage	No significance tests: 22% increase between 3 a.m.-6 a.m.; 'Less serious wounding' = -5% overall decrease, and 26% increase between 3 a.m.-6 a.m. (for subset of city centres this was a 133% increase); 'Assault with no injury' = -2% overall decrease, and a 22% increase between 3 a.m.-6 a.m. (for subset of city centres this was a 123% increase). Significance tests not reported.	No	↔
*Newton et al., (2007)	Before and after, no comparison.	City Centre London: Undefined catchment area for St. Thomas' hospital	Emergency department: alcohol-related Admissions	Alcohol related attendances, Alcohol assault and injury attendances	Significant increases in 'Total number of alcohol-attendances' (5.1%); 'Alcohol related assault' (1%); 'Alcohol related injury' (2.5%); 'Alcohol related hospital admission' (1.58).	Yes	↑

Study	Study Design	Unit(s) of Analysis	Data Source	Outcome Measures	Main Findings	Peer reviewed	Directional change in violence
*Durnford et al., (2008)	Before and after, no comparison.	City Centre Birmingham: Undefined catchment area for Birmingham emergency department	Emergency department: alcohol-related admissions	Total weekly attendances	No significant change in the volume of violent assault.. Significant change in the temporal distribution of weekly assault= 44% increase in weekend offending; and a 27.3% increase in offending between 3a.m.-9a.m.	Yes	↔
*Newton et al.,(2008)/ Hough & Hunter., (2008)	Before and after, multi-site study	Multiple units: Macro (City), Meso (Cluster), Micro (Individual bar)	Police: recorded crime data, emergency department: A&E data, qualitative research	Police: violence against the person; criminal damage, disorder calls for service. A&E: violent admissions.	Violence Against the Person'= Significant change in 1 out of 5 study sites (Nottingham=2.8%, p<.001)	Yes	↔
*Pike et al., (2008)	Before and after, multi-site study	1 City and 2 Town Centre Units	Police: recorded crime data.	Take up and use of extended hours, Changes in workloads and practices, Change in drinking behaviour, Change in crime and disorder. Change in the time of offence.	No significant change in crime and disorder (reanalysed = Mean difference 1.5, t=.95, p= n.s.).	No	↔
*El-Maaytah et al., (2008)	Before and after, no comparison.	City Centre London: Undefined catchment area for University College Hospital (UCH)	Emergency department: alcohol-related trauma admissions	Head and neck trauma presentations at A&E.	Significant 34% reduction in A&E cases of alcohol-related head and neck trauma following the Act's implementation.	Yes	↓
*Jones & Goodacre (2010)	Before and after, multi-site study	Undefined catchment areas for 4 Emergency departments in South Yorkshire	Emergency department: attendances	Alcohol related attendances (clinical coding)	Significant increase in 'alcohol-related attendances' of 0.1% (95% CI 0.1-0.2, p<.0001).	Yes	↑
*Pierce & Boyle (2011)	Before and after, no comparison.	South Cambridgeshire: Undefined catchment area for Cambridge emergency department	Emergency department attendances	Assault attendances (Before/ After), domestic violence, change in time of assault attendances.	Significant increase of 12.3% (z=1.95, p=0.05) total assaults; Significant decrease ($\chi^2=16.82$, df=1, p<0.001) in the proportion of women assaulted; slight increase in presentations at weekends ($\chi^2=35.95$, df=6, p<0.001); significant increase in assault presentation (Two-sample Wilcoxon rank-sum test, p=0.004) after midnight and before 8 a.m.	Yes	↑
*Kirby & Hewitt (2011)	Before and after, no comparison.	Preston, England	Police: recorded alcohol-related crime.	Alcohol-related violence	An average decrease of 33% in alcohol related crime in the post-intervention period. A 55% increase in the average number of alcohol related offences occurring between 3 a.m. to 4 a.m. Significance tests not reported.	Yes	↓
Rosow & Norstrom (2012)	Interrupted time series design, inner city areas (treatment), outer city areas (control)	18 Norwegian cities	Police: recorded crime data	Violent assault	Statistically significant increase of 5.0 assaults per 100,000 per quarter (17%, 95% CI: 11% - 24%).	Yes	↑
Norström & Skog (2005)	Experimental evaluation of closure of alcohol outlets.	Sweden	Crime data	Assault	No significant changes in assault indicators. Significant increase in drunk driving in phase I only.	Unknown	↔

* denotes studies evaluating the impact of the Licensing Act (2003)

Table 9: Summary of Evaluations of **Restrictions to Trading Hours** (Adapted from Humphreys et al 2013 & Popva et al 2009)¹⁸

Study	Study Design	Unit(s) of Analysis	Data Source	Outcome Measures	Main Findings	Peer reviewed	Directional change in violence
Jones et al (2009)	Before and after, multi-site study.	NSW, Australia	Police call-out data, crime, last-place-of-consumption.	Assaults	Significant reduction in alcohol-related assaults compared to the control area.	Unknown	↓
Kypri et al (2010)	Non-equivalent control group design with before and after observations.	NSW, Australia	Police data	Recorded assaults between 10pm – 6am.	Recorded assaults fell where pub closing times were restricted. The relative reduction attributable to the intervention was 37%.	Unknown	↓
NZ Police (2009)	Before and after, no comparison.	Timaru, New Zealand	Police data	Recorded assaults	The total number of violent assaults fell by 8% following the trading hour restriction.	Unknown	↓
Duailibi et al (2007)	Log-linear regression of a policy to restrict alcohol sales after 11pm	Diadema, Brazil	Crime data	Homicides, violence against women	Significant decrease in murder rates but no effect on assaults against women.	Unknown	↓

¹⁸ Popva, S., Giesbrecht, N., Bekmuradov, D. & Patra, J. (2009) Hours and Days of Sale and Density of Alcohol Outlets: Impacts on Alcohol Consumption and Damage: A Systematic Review. *Alcohol & Alcoholism* 44(5):500-519. Doi: 10.1093/alcalc/agp054.

5.2.3 One-Way Door Restrictions

We now consider the literature on one-way door restrictions, which are also known as lockouts. These allow people to leave a licensed premise after a certain time, but not enter or re-enter.

Overall, the local and international literature suggests that these are relatively ineffective for reducing acute ARH. For instance, Hadfield¹⁹ notes that the movement of drunken people is not removed as a result of lockouts, it is simply delayed and there is no conclusive evidence concerning their effectiveness. Similarly the 2012 DANTE report from Australia questioned the effectiveness of this intervention, and made a number of interesting points. For instance, it stated that:

- It is difficult to ascertain the true effects of lockouts, as they are almost invariably trialled as part of a wider set of initiatives, including shorter opening hours.
- However, several key informants (KIs) proposed that lockouts may limit the number of problems simply by limiting the number of patrons.
- Lockouts may improve patron behaviour because of the fear that they will not be allowed in elsewhere if they are ejected from one venue.
- Lockouts impose additional costs on some venues, particularly those that do not currently experience many problems and therefore do not have security staff. Somewhat perversely, operators that already experience significant issues and therefore already have door security do not face such cost increases. As a result, the best operators may be the worst affected financially, and vice versa.
- Lockouts may also affect different venues differently solely based on the time they close, rather than on whether they are the source of problems. Paradoxically, they undermine the ability of earlier closing venues to trade because people tend to skip them and go straight to the later-closing venues to ensure they gain entry before the one-way door applies.
- Most KIs felt that lockouts were less likely to reduce patron intoxication and aggression, although some reported increased aggression if patrons missed entering the venue while having friends inside.
- For the most part, KIs spoke negatively about lockouts as a strategy for reducing alcohol-related violence. Of the 91 that commented directly on effectiveness, 58 reported that lockouts were ineffective, whereas 33 reported them as effective in reducing violence.

A one-way door intervention trialled in Christchurch in late 2006 also produced mixed results. For instance, while the overall goal of a 10% reduction in alcohol related crime

¹⁹ Christchurch City Council (2013) Open agenda for council meeting on 16 May 2013.

and violence in the inner city was not met, there were reductions in some subsets of crime. There were several reasons why the trial may not have lived up to expectations, including a lack of early buy-in from bar operators, and the fact that many people delayed the one-way door from 3am to 4am. Others evidently didn't participate at all.

The following quote from the DANTE report seems to capture the general consensus around the merits of one way doors:

Overall, key informants identified a number of problems and benefits associated with implementing lockouts. While the mix of interventions made it difficult to demonstrate any standalone effect in Newcastle in terms of secondary data, there was good evidence from a wide range of key informants that lockouts on their own had substantial limitations. The major benefits reported included reduced number of people travelling between venues late at night and increased flexibility for police. On the other hand, major limitations noted were; lockouts indiscriminately targeted some venues without good logic or sense only because of trading hours, they created problems for venues in terms of situations at the door, and lockouts failed to address the core problem of intoxication."

5.2.4 Opening Hours for Off-Licensed Premises

Finally, we turn our attention to the literature on opening hours for off-licenses. Despite exhaustive searches, however, we could not locate any robust analyses or assessments of these. The only literature that we could find covered the regulation of outlet density.

It is unclear why there is no research on this topic. However, we suspect it reflects difficulties in reconciling the times at which off-license alcohol is purchased and consumed. Indeed, there is no way of knowing when alcohol purchased from an on-license will actually be consumed, which makes it virtually impossible to reconcile with the incidence of ARH.

5.3 Summary

Our literature review has provided some useful insights into the likely drivers of ARH, at least for licensed premises. The Ministry of Justice papers show that the type of premises, its opening hours and its compliance history are the key markers of risk. Of these, compliance history is the most important, reflecting the fact that a very small proportion of licensed premises account for a very high share of related offences.

Drilling into specific LAP elements in the academic literature painted a more mixed picture. The most promising element appears to be the proposed reductions in opening hours for on-licensed premises, which seem promising avenues for reducing ARH. Conversely, the academic literature suggests that the proposed one-way door policy will be ineffective and may even have negative effects. Finally, our review found that there is no evidence to support (or oppose) the proposed restrictions on off licenses.

6 Changes in Consumption

This section estimates possible changes in consumption caused by the LAP to inform the analysis of costs and benefits.

6.1 Understanding the Role of Behavioural Change

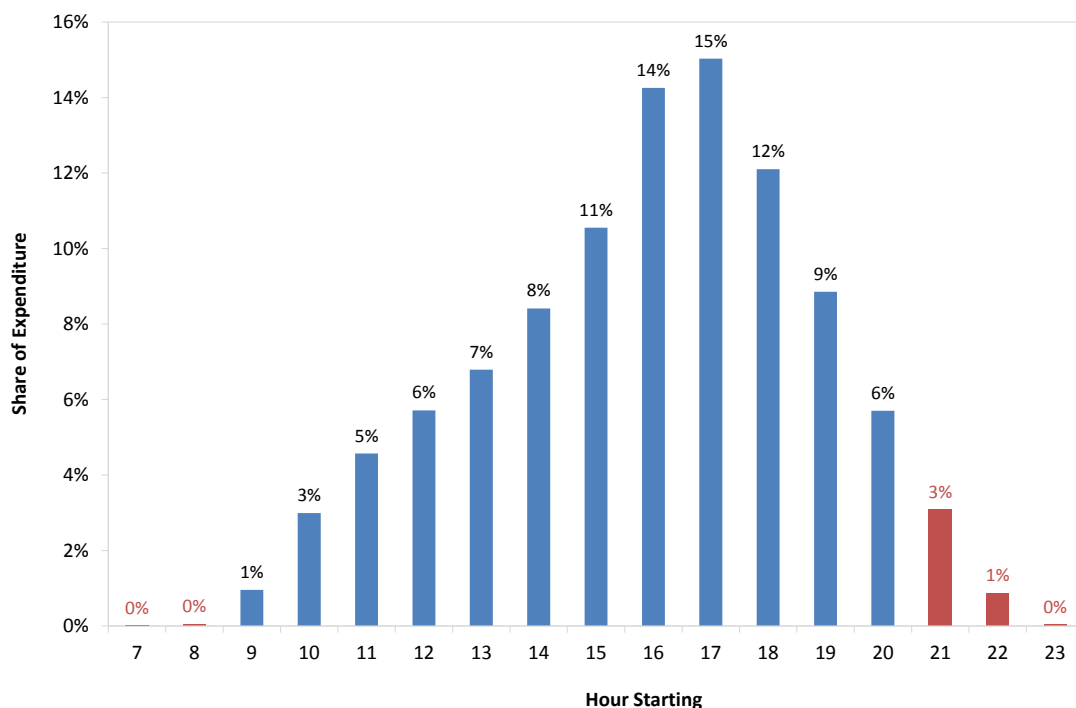
Policy initiatives such as the draft LAP do not occur in a vacuum. Instead, they are born into – and eventually form part of – complex environments in which several factors determine their ultimate success or failure. One of the most important factors to consider for the LAP is consumer reactions. Indeed, the extent to which drinking (or expenditure) habits change will profoundly affect the extent of policy-induced consumption changes.

In this section, we estimate policy-induced consumption changes in two steps. First, we estimate the changes that would occur assuming habits do not change. While highly unlikely, this sets an upper bound on the analysis. Then, we re-estimate consumption changes by factoring in potential changes in expenditure (drinking) habits.

6.2 Consumption Impacts Assuming No Behavioural Changes

To estimate potential changes in consumption (assuming no behavioural changes), we examined how much alcohol is currently purchased outside the hours that would be permitted by the draft LAP and translated the implied expenditure impacts to changes in consumption. To that end, **Figure 15** first shows the distribution of bottle store expenditures by hour.

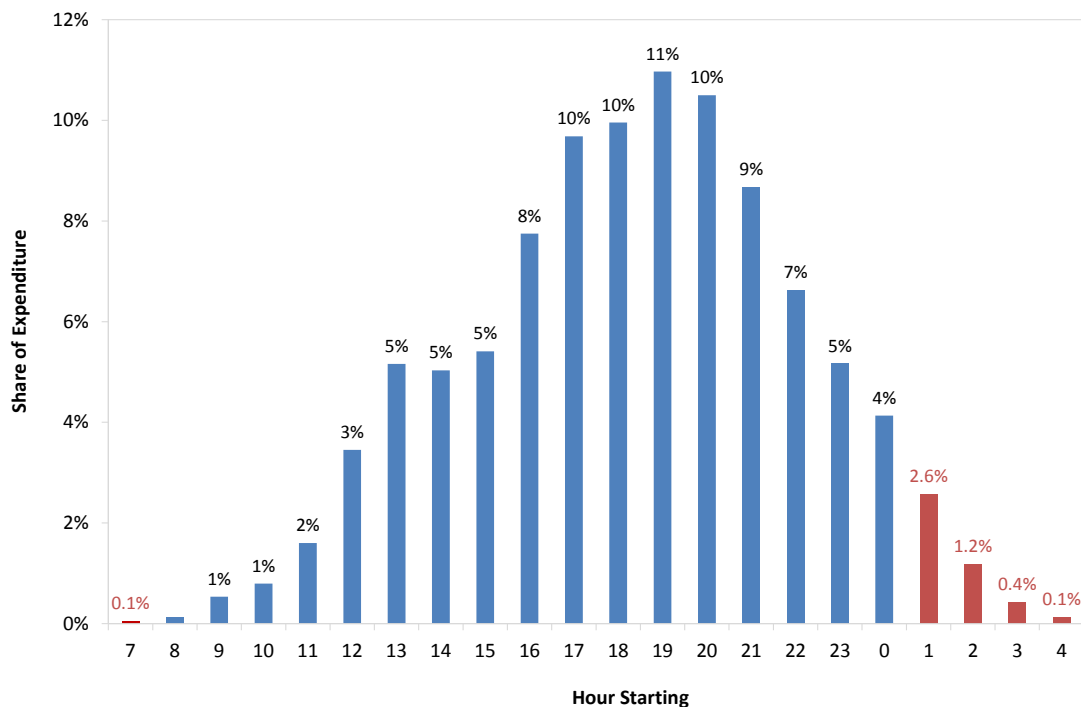
Figure 15: Distribution of Bottle Store Expenditure by Hour (Post Quake)



The shaded red bars in **Figure 15** denote expenditures that currently occur outside the hours that would be permitted by the LAP. They total 4%. If we assume that supermarket alcohol sales follow a similar hourly profile, this means that the LAP could reduce off-license expenditure by 4% assuming no behavioural change.

We now turn our attention to on-license expenditures. To that end, Figure 16 shows the hourly expenditure distribution of taverns.

Figure 16: Distribution of Tavern Expenditure by Hour (Post-Quake)



According to Figure 16, ignoring behavioural changes and using 1am as the maximum closing time, the LAP could reduce expenditure at taverns by 4.4%. However, there are two important caveats. First, not all on-license alcohol expenditure occurs at taverns. A significant amount also occurs at cafes, restaurants, sports clubs and so on, most of which will be unaffected by the LAP. Second, while most taverns will have to close at 1am, a handful will be able to trade through to 3am (subject to a one-way door policy). Accordingly, the total expenditure impact of the LAP on on-licensed expenditures will be less than 4.4%.

Even though taverns account for only 30% of licensed premises, we have assumed that they account for 50% of on-licensed alcohol expenditure. If we then ignore the fact that some taverns may shut at 3am and instead assume that they all close at 1am, we can see that the LAP would reduce on-licensed expenditure by 2.2% (i.e. 50% of 4.4%).

The final step in the analysis was to translate the estimated changes in expenditure to changes in consumption. We did this using data from a recent Ministry of Justice report which reported both the values and volumes of alcohol sold at off-licenses and on-

licenses.²⁰ According to our analysis, this scenario could result in an overall reduction of citywide alcohol consumption equal to 3.6% ignoring behavioural changes.

6.3 Consumption Impacts Including Behavioural Changes

We now allow for inevitable behavioural changes that will occur as a result of the draft LAP. To understand the nature and extent of these, we first reviewed the responses given to questions on this topic in both Council's Facebook survey and a survey run by Hospitality New Zealand (HNZ).

Amongst other things, Council's Facebook survey asked "if pubs, bars or nightclubs were to close an hour or so earlier, how would this change how you plan your nights out?" The responses were as follows:

- 19% would go out earlier,
- 14% would loiter around the bars/clubs after closing time,
- 31% would stay home or go to a friend's place instead, and
- 37% would go out and come home the same as they do now

Hence, nearly two-thirds of respondents said they would change their behaviours as result of the LAP. Interestingly, only a handful said they would go out earlier to compensate for the reduced hours, with many more saying they would either not go out at all or would loiter around the pubs/bars after closing time.

A related question posed in the HNZ survey was "Would earlier closing times for bars and a one-way door at 1am make you drink less?" Only 4% said that it would make them drink less.

Yet another issue canvassed in the HNZ survey was "If the hours for off licence sales (supermarkets, bottle stores) were reduced, would you still purchase alcohol for the night prior to going out for a night out or would you go to a bar earlier?" 90% said they would just buy their off-license alcohol earlier, and 10% said they would go out to bars earlier.

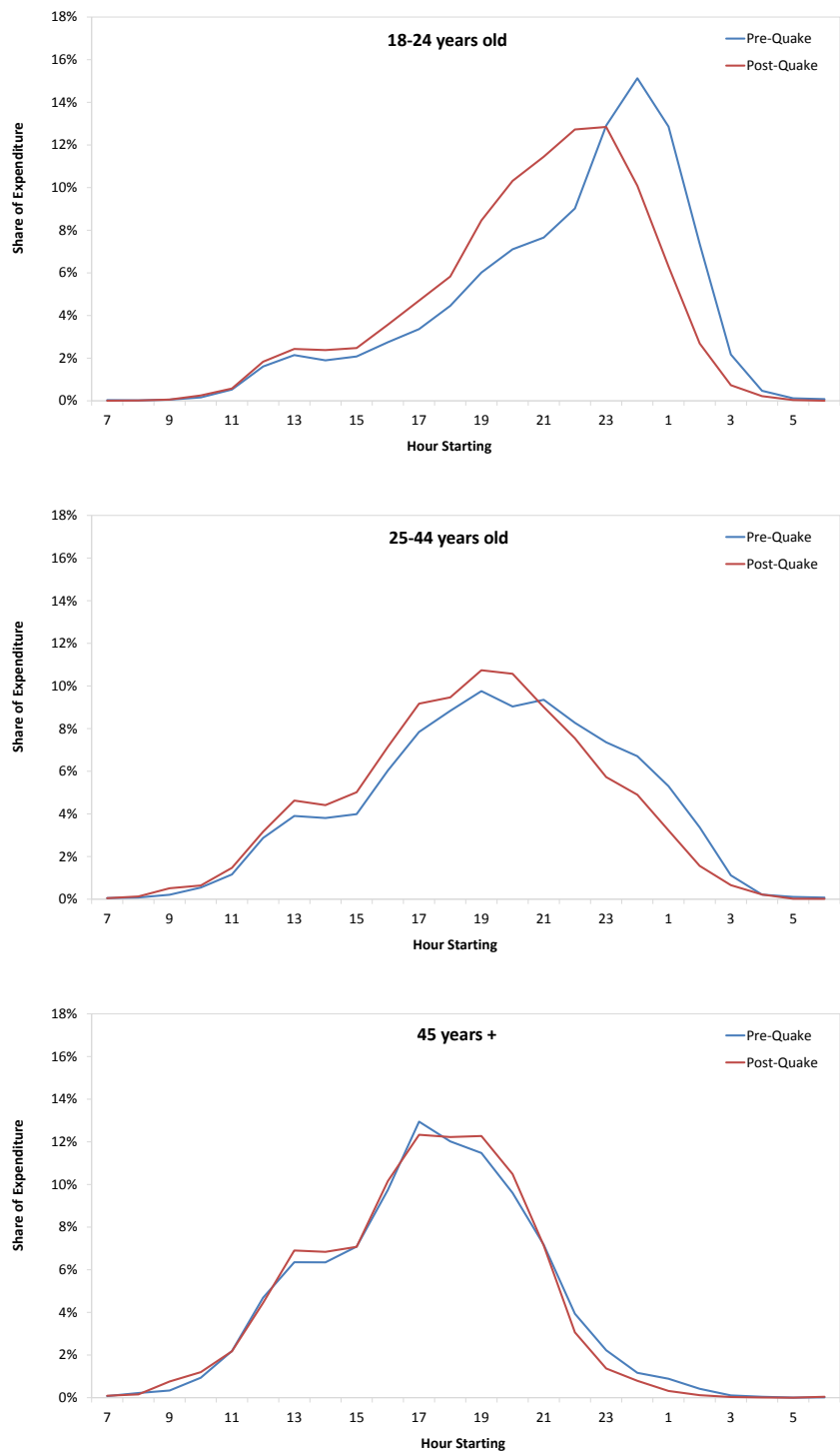
These responses seem to suggest that the LAP is likely to cause significant behavioural changes, and that the amount consumed by many people may not change much at all. However, it would be unwise to base the analysis solely on these responses, as there is no way to guarantee their accuracy. Indeed, people's actions may differ considerably from the responses that they provided in the past to surveys, so we sought other sources of information to guide the analysis.

As it happens, the earthquakes themselves provide a perfect natural experiment into the way that people react to changes in opening hours, at least with respect to on-licenses. This is because the quakes had a disproportionate impact on inner city taverns, which accounted for the majority of late-night venues. As a result, the quakes themselves caused a natural reduction in late-night opening hours. Thus, by comparing the pre-

²⁰ Ministry of Justice (2013) Risk-based licensing fees: Identifying risk factors for the New Zealand context.

quake and post-quake distributions of tavern expenditure, we can directly observe how consumers might react to the LAP (which also seeks to reduce late night trading). The following graphs show the results separately for three different age groups (18 to 24, 25-44, and 45+).

Figure 17: Pre- and Post-Quake Distributions of Tavern Expenditure



As we can see in the graphs above, there have been noticeable changes in expenditure habits, particularly for younger people (who comprise the majority of late-night patrons).

Based on the survey responses and analysis above, we estimated that behavioural changes (i.e. people shifting alcohol expenditure to earlier in the evening) will reduce the impacts of the LAP on off-license expenditures by 75% and on-licenses by 50%. Plugging these into the model, **we estimate that the overall impact of the LAP on citywide alcohol consumption will be a 1% reduction allowing for behavioural change.**

6.4 Summary

This section has estimated possible changes in consumption caused by the LAP to inform the analysis of costs and benefits. It has found that, having allowed for shifts in the timing of expenditure, the overall effect will be quite small. In fact, according to our analysis, the overall change in citywide consumption will be around 1% allowing for behavioural change.

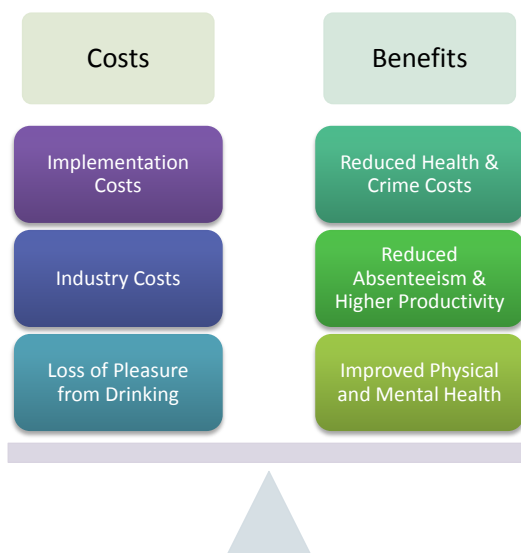
7 Analysis of Costs and Benefits

This section analyses the potential costs and benefits of the consumption changes estimated in the previous section.

7.1 Types of Costs and Benefits Considered

The following diagram shows the main categories of costs and benefit considered in this study. They have been adapted from a European Union project called Standardising Measurement of Alcohol Related Troubles (SMART), which sets the industry benchmark for studies of this kind. Further details on each type of cost and benefit are provided below. Suffice to note that our focus in all cases is on community costs and benefits, not just those that accrue to specific sectors or individuals.

Figure 18: Classes of Cost and Benefit Analysed



7.2 Policy Costs

7.2.1 Implementation costs

The first set of policy costs relate to the costs of implementation. For the purposes of the LAP, they relate mainly to the costs of the special consultative procedure that Council is obliged to follow. In addition, they should include any other costs that may arise as a result of implementation, including the probability-weighted costs of appeals. However, they should exclude any costs incurred up to the point that a decision is made on whether to formally adopt a LAP, as those will have been incurred regardless and should therefore be treated as 'sunk.'

7.2.2 Industry Costs

Industry costs relate to the impacts of the policy on the revenues, profits and employment levels of off-licensed and on-licensed premises. In addition, they should include the impacts of any expenditure redistributions. For instance, if people spend less

on alcohol as a result of the LAP, the analysis should also include the corresponding uplift in sectors to which expenditures are diverted.

Within the time available for this report, it has not been possible to model potential expenditure diversion scenarios and consider the corresponding benefits to those sectors. However, if we assume that each dollar spent in those other industries has the same impacts on profits and employment as expenditure spent on alcohol, we can roughly assume that the overall impacts on the economy will be neutral. In other words, the downturn in the alcohol market should be more-or-less offset by upturns elsewhere.

While we did not have the necessary information to consider the potential upturns in sectors that could experience a windfall gain from the policy, we did have the information to consider potential detriments on licensed premises, particularly bars/taverns/nightclubs. This seems important given that many are not currently operating, and the decision to rebuild licensed premises could be materially affected by the LAP. We therefore took the opportunity to consider the extent to which a reduction in maximum trading hours might affect the profitability and viability of rebuilding bars/taverns/nightclubs.

To better understand potential impacts on the business case for rebuilding in the central city, we first sought to understand the overall financial health of the sector. While some participants in the hospitality industry will be more profitable than others, a general picture can be established from various key surveys and datasets. For instance, the Annual Enterprise Survey is a highly-detailed financial analysis conducted each year by Statistics New Zealand, with the results disaggregated by 100 sectors. One of these is Food and Beverage services, which broadly represents the hospitality sector.

According to the results for this sector in the Annual Enterprise Survey:

- Net profits average 3.5% of sales,
- The returns on total assets average 6% of sales, and
- The average net profit per employee is less than \$3,000.

To further explore sector health, we then used benchmarking data published by the IRD for pubs, taverns and bars.²¹ These showed that:

- The median return on total assets for medium-sized bars /pubs is 0%, and
- The median return on equity for medium-sized bars/pubs is 1%

Finally, we used Statistics NZ's industry profiler for the food and beverage services sector, which showed that:²²

²¹ IRD (2012) Industry benchmarks: H4520 – Pubs, taverns and bars. Retrieved from <http://www.ird.govt.nz/industry-benchmarks/bm-find-your-benchmark/benchmarks-h4520-pubs.html>

- 58% of new businesses started in 2005 were no longer trading in 2010, and
- The employee turnover rate averages about 25% per quarter. This means that the entire workforce turns over about once a year.

To complete the analysis, we then used the BNZ data to see how revenues accrued over the day, both before and after the quakes, to see how the restrictions proposed by the LAP could affect turnover. The results are tabulated below by age bands of patrons. The grey shaded row shows the proportion of daily revenue earned by 1am, and the shaded red row shows the proportion earned by 3am.

Figure 19: Cumulative Revenue Distribution for Taverns

Hour Starting	18-24 years		25-34 years		35-44 years		45 years +	
	Pre	Post	Pre	Post	Pre	Post	Pre	Post
7	0%	0%	0%	0%	0%	0%	0%	0%
8	0%	0%	0%	0%	0%	0%	0%	0%
9	0%	0%	0%	1%	0%	1%	1%	1%
10	0%	0%	1%	1%	1%	2%	2%	2%
11	1%	1%	2%	2%	3%	4%	4%	4%
12	2%	3%	4%	5%	6%	8%	8%	9%
13	5%	5%	7%	9%	11%	14%	15%	16%
14	6%	8%	10%	12%	16%	19%	21%	23%
15	9%	10%	13%	17%	21%	25%	28%	30%
16	11%	14%	17%	23%	29%	34%	38%	40%
17	15%	18%	24%	31%	39%	44%	51%	52%
18	19%	24%	31%	40%	50%	55%	63%	64%
19	25%	33%	39%	50%	61%	66%	74%	77%
20	32%	43%	48%	61%	71%	77%	84%	87%
21	40%	54%	58%	70%	80%	85%	91%	94%
22	49%	67%	67%	79%	87%	91%	95%	97%
23	62%	80%	76%	86%	92%	95%	97%	99%
0	77%	90%	85%	92%	96%	98%	99%	99%
1	90%	96%	93%	97%	98%	99%	99%	100%
2	97%	99%	98%	99%	99%	100%	100%	100%
3	99%	100%	99%	100%	100%	100%	100%	100%
4	100%	100%	100%	100%	100%	100%	100%	100%
5	100%	100%	100%	100%	100%	100%	100%	100%
6	100%	100%	100%	100%	100%	100%	100%	100%

Not only does this table show that effects on feasibility depend on whether a venue targets younger or older people, but that they also depend on whether the pre-quake or post-quake revenues are used as a benchmark. Indeed, as discussed earlier, the revenue profile for younger people has shifted forward as a result of the quakes, so the impacts of closing earlier depend on whether we use the pre- or post-quake profiles.

As an example, consider an inner city tavern that wishes to attract mainly younger people. If it is forced to shut at 1am, this analysis suggests it could lose up to 23% of its revenue based on the pre-quake profile, and about 10% based on the post-quake profile.

²² Statistics New Zealand (2013) Industry Profiler: Food and beverage services. Retrieved from <http://businesstoolbox.stats.govt.nz/IndustryProfilerViewProfile.aspx?ProfileID=GH212>

Given the relatively thin margins on which many premises appear to trade, either scenario could render the rebuild an unattractive business proposition. We therefore conclude that, for some premises, the LAP could indeed affect viability.

Overall, the venues likely to experience the greatest financial hardship from earlier opening hours are late-night venues, such as nightclubs. Many of these attract patrons from midnight onward, and their busiest times are usually from 2am onwards. A closing time of 1 am (or even 3am with a one-way door from 1am) is likely to seriously affect the viability of their businesses. This point was also made by CERA in its submission, which stated:

“It is particularly important that the needs of the entertainment and hotel sector are considered in the development of the LAP. CERA urges the Council to consider if the opening hours of the Central Area A (Entertainment/Hospitality Precincts) will provide sufficient incentive to draw investment back into this area.”

Another industry-related issue raised in submissions was the potential impacts of reduced alcohol trading hours on the likelihood of supermarkets remaining open outside these times. Indeed, both supermarket operators argued that people may alter their shopping hours to match the restricted alcohol trading hours, potentially rendering other times unprofitable to remain open. If opening hours are reduced as a result, there will be both inconvenience for shoppers and also a potential loss of local incomes and employment. We were unable to verify these conclusions within the time available.

In addition, the supermarkets noted that:

1. The proposed restrictions will disproportionately affect supermarkets because of the longer duration of shopping trips. Supermarket shopping takes longer than picking up a bottle of wine or beer from a bottle store, and these restrictions will generally impact on supermarket customers that arrive from about 8.30pm on.
2. Unlike taverns and bottle stores, supermarkets almost invariably require resource consent. As a result, the RMA is a good tool for managing the effects of new supermarkets.
3. The extent of ARH associated with supermarkets may be less than other types of off-license because (i) street views of supermarkets do not portray the sale of beer and wine and (ii) supermarkets not sell hard spirits or RTDs.
4. The location of beer and wine within supermarkets is now prescribed in the Act.

Finally, we note that a number of niche off licenses (e.g. wineries) are concerned that the LAP fails to adequately differentiate them from other off-licenses. For instance, representatives of the wine industry made the following comments in submissions:

1. Winery licenses are low risk and “do not generally give rise to problems of excessive consumption or sale and supply to minors because small volumes are sold at high cost to discerning consumers.”

2. Margins at wineries are extremely tight and profitability is a concern. Compliance costs can have a major impact. It is particularly difficult to get special licenses for events, as the cost of doing so can be prohibitive.
3. The LAP should differentiate between types of off-licensee according to the level of risk, cost and social and economic benefits attributable to that type of licensee.

We agree that the LAP is currently too coarse and should be refined. However, we also note that Council has considered providing for different maximum trading hours depending on the type of off-licensed premises; specifically a policy to allow supermarkets to trade for longer hours than other types of off-licenses. However, this was rejected for the following reason:²³

“However as approximately 70% of all alcohol is sold by licensed supermarkets and grocery stores, a policy allowing longer trading hours for supermarkets is assessed as inconsistent with the objectives of the LAP and potentially an unreasonable and/or unfair provision”.

With all due respect, this statement does not appear to be factually correct. For instance, using information published in a recent Ministry of Justice report²⁴, we calculated that (ignoring niche off licences etc) supermarkets account for 36% of alcohol sales, bottle stores account for 40%, and on-licenses account for the remaining 24%.

7.2.3 Loss of Pleasure from Drinking

Any policy-induced reductions in consumption will cause corresponding losses of pleasure from drinking, which economists measure using “consumer surplus.” The consumer surplus for each transaction equals the difference between what people would have been willing to pay for something and the amount that they actually pay. For instance, if someone buys a wine at a tavern for \$8 but would have been willing to pay \$10, then their consumer surplus on that transaction is \$2.

Measuring the exact impacts of alcohol-related policies on consumer surplus is fraught with difficult for at least three reasons. First, there is no way to accurately determine how much people would have been willing to pay for alcoholic beverages over and above what they actually pay, and hence the baseline consumer surplus is unknown. Second, any losses of consumer surplus associated with reduced alcohol consumption must be offset against increases in consumer surplus associated with expenditure being redirected towards other goods and services. Third, not all drinking is rational, and hence the assumptions underpinning a traditional consumer surplus analysis do not always hold. This has been discussed at length in the economic literature, but there does not appear to be any widely-held consensus on how to address it in practical terms.

Overall, we would expect the draft LAP to cause a net reduction in the pleasures from drinking. This is because, while money previously spent on alcohol is diverted elsewhere, the pleasure gained from that redirected spending will be less than the

²³ Christchurch City Council (2013) Open agenda for council meeting on 16 May 2013. Page 223.

²⁴ Ministry of Justice (2013) Risk-based licensing fees: Identifying risk factors for the New Zealand context.

pleasure lost from drinking, otherwise people would not choose to spend their money on alcohol in the first place. Unfortunately, it is difficult to quantify the net effects, but we are confident that there will be a net loss of some sort.

7.3 Policy Benefits

7.3.1 Reduced Health & Crime Costs

One of the greatest potential benefits of the draft LAP would be reductions in the healthcare and police resources required to deal with the negative impacts of alcohol. For instance, a 2012 report by BERL showed that alcohol costs the regional healthcare system around \$63 million per annum. The costs of policing are unknown, but are probably not as high.

As with the consumer surplus, quantifying the potential impacts of the LAP on health and police costs is difficult. However, if we assume that these costs accrue pro-rata with consumption, some ballpark estimates can be derived. To proceed, recall that our overall estimate of policy-induced consumption was a decrease of 1%. Since Christchurch City roughly accounts for two-thirds of the regional population, this translates to a reduction in regional consumption of 0.67%. Assuming that healthcare costs reduce in the same proportion, using the BERL figures we can estimate a reduction of $\$63 \text{ million} \times 0.67\% = \$420,000$.

However, the assumption that healthcare costs accrue pro-rata with consumption is unlikely to hold. Rather, the marginal impacts of changes to late night consumption are likely to have proportionately greater impacts than changes earlier in the day. For instance, we might say that each 1% reduction in consumption caused by the LAP reduces health and police costs by 3%. Under this assumption, the reduced health costs caused by the LAP would be around \$1.3 million.

On the other hand, a uniform closing time (which the LAP proposes except for a dozen late night inner city venues) could have negative impacts on healthcare and police costs. This was noted in several of the papers that we reviewed, and also strongly voiced by a number of submitters.

The issue is that a blanket closing time can lead to ‘peak density’, where a number of intoxicated people congregate in one place and cause trouble, particularly when there is a limited number of taxis and food operators. The LCR captured this issue as follows:

“We are aware of concerns that a uniform closing time would place constraints on transport and policing resources, potentially creating increased risks of drinking and driving, and violence, vandalism, loitering, noise and other disorderly behaviour associated with large numbers of people vacating premises around the same times. Indeed, New Zealand has seen evidence of the harm of rigid closing times, with the “six o’clock swill” and then “10 or 11 o’clock swill”, which occurred as a result of past legislation.”

The DANTE report also drew similar conclusions about potential adverse effects of blanket closing times as follows:

“One of the other issues identified by key informants and often raised in the media relates to potential problems with transport and the discourse of people flowing onto the streets at the same time having difficulty finding transport and leaving safely. This was one of the major reasons quoted by the Blair government in England to extend the country’s trading hours”.

Interestingly, this point was also addressed in the literature survey prepared by Council, which states:

“The more that closing times vary within an area, the more even the spread of demand for services. Peaks of demand may be reduced by shifts away from fixed closing hours towards more varied trading times.”

Unfortunately, it is difficult to say much more than this. Suffice to note that the LAP may reduce healthcare and police costs provided the effects of peak density can be adequately managed.

7.3.2 Reduced Absenteeism and Improved Productivity

Another benefit of the policy will be reduced absenteeism and improved worker productivity. Indeed, both can be badly affected by excessive or inappropriate alcohol consumption, so any reduction in such behaviour will be beneficial. To gauge the size of the issue, the following table from the NZADS shows self-reported absenteeism attributed to alcohol by age group.

Table 10: Self-Reported Alcohol-Related Absenteeism (NZADS)

# of Days off Work	16-17	18-24	25-34	35-44	45-54	55-64
One	4.6%	4.8%	3.7%	1.7%	0.7%	0.3%
Two	3.0%	4.4%	1.5%	0.3%	0.3%	0.1%
Three to Five	2.6%	3.7%	2.2%	0.7%	0.2%	0.1%
Six or More	2.6%	2.4%	0.6%	0.5%	0.4%	0.2%

The results above show that a number of people have reported missing work due to the adverse effects of drinking too much. In addition, a number of others are likely to still turn up but work relatively unproductively. While the LAP may have some impacts here, they will be small given the minor estimated reduction in consumption.

7.3.3 Improved Physical and Mental Health

The final benefit that we consider here are improvements to the physical and mental health of problem drinkers, their friends and family, and also the wider community. These are probably the most difficult aspect to quantify, but may also be the most significant overall. Indeed, the harmful effects of problem drinking can often take a toll on loved ones, so the benefits of any reduction in harmful consumption are likely to be widespread. Again, however, there is no way to progress the analysis beyond these high level observations.

8 Overall Assessment of Costs and Benefits

Given the analysis set out in the previous section, we believe that the economic costs of the policy will outweigh the economic benefits because:

- While the international literature has shown that reductions in opening hours can help reduce ARH, reductions in consumption caused by the LAP will be minor and hence so too will any reductions in acute ARH. As a result, policy benefits will be minor.
- At the same time, the policy could have a number of unintended consequences, including undermining the potential viability of rebuilding licensed premises in the CBD.
- In addition, it will impose additional costs on many licensed premises, and unduly disadvantage a number of very low-risk premises, such as wineries.
- The key issue is that – while very difficult to do within the ambit of a LAP – the policy fails to address the key drivers of acute harm, namely our binge drinking culture coupled with a tendency to pre-load.
- Further, the policy appears too coarse, and may not adequately reflect the relative harm caused by different types of licensed premises. A more fine-grained approach should be considered.
- A significant amount of ARH occurs in the home, and the policy is unlikely to provide much assistance with this. Conversely, introducing measures to regulate the density of new outlets in certain areas may have positive effects, but these have not been included.
- There is no evidence to support or oppose the proposed off-licence restrictions. Further, council does not appear to have a strong community mandate for reducing the hours that alcohol can be sold at certain off-licenses, such as supermarkets.
- Because the policy does not (and essentially cannot) target problem drinkers, it is fairly blunt and therefore has the potential to negatively impact a number of law-abiding citizens.

It is also important to note that, even if this analysis did conclude that benefits exceeded costs, this does not necessarily mean that the policy should be adopted. Rather, Council must also satisfy itself and the wider community that the draft LAP is the best way to meet policy objectives. However, this cannot be determined until a thorough examination of all other options has been completed. We therefore recommend that Council take the opportunity to re-examine its options before deciding whether or not to proceed with the LAP.

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Regulatory Impact Analysis Handbook

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New Zealand Government

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Part 1: Introduction and RIA First Steps

This section sets out the purpose of Regulatory Impact Analysis (RIA) and how to work out whether the requirements apply to your project—including how to complete a Preliminary Impact and Risk Assessment (PIRA).

A quick guide to Cabinet's RIA requirements

1. Determine whether the RIA requirements could apply	<p>Are you starting policy work with potential regulatory implications that will lead to submission of a Cabinet paper?</p> <p>“Potential regulatory implications” means options that could involve creating, amending or repealing primary legislation or regulations.</p> <div> <div> <p>If potential regulatory implications, complete Preliminary Impact and Risk Assessment (PIRA)</p> </div> <div> <p>If no potential regulatory implications, RIA requirements do not apply. The RIA framework is still useful to structure analysis</p> </div> </div>
2. Prepare Preliminary Impact and Risk Assessment (PIRA)	<p>Discuss the PIRA with your Treasury policy team as early as possible, to confirm whether the RIA requirements apply and whether any of the potential regulatory proposals are likely to have a significant impact or risk.</p> <div> <div> <p>If Treasury confirms that no significant impact or risk is likely, then the agency will be responsible for quality assurance</p> </div> <div> <p>If Treasury confirms that there is likely to be significant impact or risk, Regulatory Impact Analysis Team (RIAT) involvement is required. Early engagement is recommended</p> </div> </div>
3. Undertake regulatory impact analysis (RIA)	<p>Apply the RIA framework to your work from the start of the policy development process. RIAT is available to provide RIA training and project-specific assistance. Discussion documents containing options with a potential for significant impact or risk must be provided to RIAT for comment prior to consultation.</p>
4. Prepare the Regulatory Impact Statement (RIS) and Agency Disclosure Statement	<p>The RIS should be prepared before the Cabinet paper. It provides a standalone summary of the impact analysis for decision-makers and must include all the required information. The relevant policy manager responsible for producing the RIS is required to complete and sign the disclosure statement, within the RIS</p>
5. Obtain independent quality assurance of the RIS	<p>Independent quality assurance must be provided either by RIAT or through a suitable internal review process. A quality assurance statement (drafted by RIAT or agency's internal QA) must be provided in the Cabinet paper</p>
6. Prepare Cabinet paper	<p>The Cabinet paper focuses on the Minister's proposal. It should refer to the RIS, appended to the Cabinet paper</p>
7. Publish the RIS	<p>All RISs must be published on the agency and Treasury websites. The URLs to published RISs must be included in the Explanatory Note to Bills, but with hard copies also provided to the House</p>
8. Complete Disclosure Statement	<p>A disclosure statement is required for all government Bills (unless exempt) and all “substantive” government SOPs. Disclosure statements are to be provided to Cabinet along with the Bill or SOP when final approval is sought to introduce legislation.</p>
9. If RIA requirements not met	<p>All “significant” regulatory proposals that do not meet the RIA requirements will undergo a post-implementation review. This includes proposals that are not accompanied by a RIS but to which the RIA requirements apply.</p>

1 About this handbook

This handbook provides an overview of Regulatory Impact Analysis (RIA) and guidance on the main elements of Cabinet's RIA requirements. It supports and supplements the information provided in the [CabGuide](#). It also incorporates Cabinet's decisions on changes to the RIA requirements taken since 2009, when the previous edition was published.

There is a separate section for each of the main elements of the RIA requirements. These sections provide links to any templates and to further reference material.

1.1 Further information

This handbook cannot address all potential issues that may arise in regulatory proposals or policy situations. We recognise that developing effective legislation is a complex undertaking and that the realities of the policy development process may at times differ from the idealised process set out in this handbook. Consequently, there will be times when agencies will need to exercise their best judgement on how to give effect to the *intent* of the RIA requirements in the particular circumstances they find themselves in. The Regulatory Impact Analysis Team (RIAT) in the Treasury is the authoritative source of general guidance and can assist agencies with RIA good practice and on-going training.

The Treasury may issue more detailed, supplementary guidance on specific topics, where experience shows that such additional material would be helpful. For example the [Cost Benefit Analysis Primer](#) is a valuable resource when determining the impact of each regulatory option considered.

1.2 Keeping the handbook updated online

This handbook will be updated periodically online, in order to keep it accurate and as helpful as possible. This version of the handbook was last updated in **July 2013**.

To ensure you have the latest version please access the online handbook at:
<http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis>.

1.3 Requirements for improved disclosure of RIA

Cabinet in April 2013 agreed to increase the transparency of the RIA leading up to Cabinet consideration at the stage of introducing new legislation. Departments are now required to disclose in a standalone statement the quality assurance processes they have undertaken during the development of legislation, and key features of that legislation that are likely to be of interest to the public and Parliament

A disclosure statement is separate from a RIS (and separate from the Agency Disclosure Statement within the RIS, or ADS). Like a RIS, however, it is a departmental document that provides factual information about the development and content of legislation proposed by the government. It largely takes the form of a series of questions that must be answered YES or NO, with further information required to elaborate, explain or clarify the answer given

The information required for disclosure is linked to existing government expectations for the development of legislation, or to significant or unusual features of legislation that tend to warrant careful scrutiny. The Detailed Guide to Disclosure Statements can be found online at: www.treasury.govt.nz/publications/guidance/regulatory.

For further assistance or guidance with disclosure statements and their relationship with RISs, contact RIAT: ria@treasury.govt.nz.

1.4 Your feedback welcome

We welcome your feedback on this handbook, including suggestions for possible additions or improvements. We would also like examples of good practice that can be shared with other agencies. Any comments or suggestions can be sent to ria@treasury.govt.nz.

2 The purpose of Regulatory Impact Analysis (RIA)

The purpose of Regulatory Impact Analysis (RIA) is to help achieve a high quality regulatory environment by ensuring that regulatory proposals are subject to careful and robust analysis. RIA is intended to provide assurance about whether problems might be adequately addressed through private or non-regulatory arrangements—and to ensure that particular regulatory solutions have been demonstrated to enhance the public interest.

RIA summarised in a Regulatory Impact Statement (RIS) can serve two benefits:

- **Enhancing the evidence-base to inform decisions** about regulatory proposals—to ensure that all practical options for addressing the problem have been considered and that the benefits of the preferred option not only exceed the costs but will deliver the highest level of net benefit, and
- **Transparency**—the presentation of agencies' free and frank advice to decision-makers at the relevant decision points provides reassurance that the interests of all sectors of the New Zealand public have been considered. RIA also aims to encourage the public to provide information to enhance the quality of regulatory decisions, to further inform the evidence-base.

2.1 Cabinet's expectations for Regulatory Stewardship

In April 2013, Cabinet agreed to a set of expectations for the public sector's responsibilities for regulation [CAB Min (13) 6/2B refers].

The expectations outline at a high level how agencies should design and implement regulation. The agency should not propose regulatory change without:

- clearly identifying the policy or operational problem it needs to address, and undertaking impact analysis 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.

The full list of stewardship expectations can be found in the [Guidance on Regulatory System Reports](#).¹

2.2 The role of RIAT

RIAT is an independent unit located within the Treasury. Its role is to:

- provide quality assurance (see [Part 5](#)) of the RIS for regulatory proposals likely to have a significant impact or risk
- provide comments on draft discussion documents for significant proposals
- provide general advice on the RIA requirements, and
- help build capability across government to undertake high quality impact analysis. This includes providing guidance and training, for example on appropriate analytical techniques such as cost benefit analysis.

The nature of RIAT's involvement in significant proposals will depend on the characteristics of the proposal and the policy development process, as well as the existing capabilities and internal quality assurance processes of the lead agency. It may involve:

- working alongside agencies to assist them in meeting the RIA requirements, such as by providing comments draft terms of reference for major pieces of work (eg, cost benefit analyses), and
- referring proposals to other departments, agencies or specialists who have relevant expertise in regulatory quality issues or the subject matter.

¹ Available online at:
http://www.treasury.govt.nz/publications/guidance/regulatory/systemreport/04.htm#_toc1.2

3 When do the RIA requirements apply?

The Regulatory Impact Analysis (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 approval².

This includes papers submitted to Cabinet seeking:

- the release of a discussion document (see [Part 3](#)) that contains options that may lead to regulatory change (although a RIS is not necessarily required if the RIA elements are incorporated in consultation material—see section on *Effective Consultation* ([Part 3](#)))
- “in principle” policy decisions and intermediate policy decisions, (see [Part 4](#)) particularly those where policy options are narrowed down (eg, limiting options for further work/consideration, negotiating mandates for certain international agreements)
- decisions to introduce regulatory changes that are merely enabling and the substantive decisions as to whether and what sort of intervention will be made later, and
- to inform Cabinet of a Minister’s intention to make regulations under an enabling power given to that Minister in an Act.

The RIA requirements should be met in one of the following ways:

- where Cabinet is being asked to give policy approval, a RIS must accompany the Cabinet Paper, or
- where Cabinet is being asked for permission to consult on potential regulatory options, the substantive RIA elements must be incorporated into the discussion document (or a draft RIS attached to the discussion document).

Policy proposals with regulatory implications are normally submitted to Cabinet Committees for policy approval before legislation or regulations are drafted. In rare circumstances, the policy proposal and draft regulations may be submitted together. In these cases, the usual procedure is for the paper to be submitted to the relevant Cabinet Committee, rather than directly to Cabinet Legislation Committee (LEG).

To meet the RIA requirements, RISs (or discussion documents if no RIS is produced at the consultation stage) must be complete, convincing, clear, and concise. Efficient and effective consultation must also have taken place during the RIA process, and be accurately reflected in the RIS. The specific requirements are set out in the section *Undertaking RIA* (see [Part 2](#)).

² The RIA framework provides a useful basis for any policy development process, not just those that may consider regulatory options or result in a Cabinet paper. However, the RIA requirements are formally triggered by a submission to Cabinet.

3.1 Exemptions

The value of completing even a modest Regulatory Impact Statement (RIS) is likely to be limited in some circumstances, such as those where the potential proposals would result in little or no change to the status quo legislative position or would have no or very small impacts outside of government. Consequently, the RIA requirements do not apply to those aspects of proposals that:

- involve technical “revisions” or consolidations that substantially re-enact the current law in order to improve legislative clarity or navigability (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies)
- are suitable for inclusion in a Statutes Amendment Bill
- would repeal or remove redundant legislative provisions
- provide solely for the commencement of existing legislation or legislative provisions;
- need to be authorised in an Appropriation Bill or an Imprest Supply Bill
- are for a Subordinate Legislation (Confirmation and Validation) Bill relating to regulations that have already been made
- implement deeds of settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements
- bring into effect recognition agreements under the Marine and Coastal Area (Takutai Moana) Act 2011
- are essential (the minimum necessary) in order to comply with **existing** international obligations that are binding on New Zealand, or
- have no or only minor impacts on businesses, individuals or not-for-profit entities (such as might be the case for certain changes to the internal administrative or governance arrangements of the government, like the transfer of responsibilities, staff, or assets between government agencies).

3.2 Discussion documents

The RIA requirements apply to discussion documents that include consideration of options that may lead to regulatory changes. A Cabinet paper seeking to release a discussion document with regulatory proposals must apply RIA in one of two ways: either a consultation/interim RIS must be appended to the discussion document; or the discussion document itself must include the substantive RIA elements. Discussion documents for significant issues must be provided to RIAT for comment prior to consultation.

Under most circumstances, Treasury recommends that departments include the elements of a RIS (a summary of the RIA) in the discussion document. In some cases—such as when a Cabinet paper seeks in-principle decisions or seeks to narrow options prior to consultation—a RIS will usually be required. Such cases are best determined either by agencies or with RIAT on an individual basis as early as possible.

Whether or not a separate RIS is prepared, the discussion document should include the RIA elements, as doing so will optimise the value of consultation for subsequent policy development. Incorporating the RIA elements involves:

- **Structuring the document around the RIA framework:** explaining the current situation and the nature and size of the problem; setting out the policy objectives; identifying the range of feasible options, and providing preliminary analysis of the costs, benefits and risks of these options, and an indication as to how they would be implemented, monitored, and reviewed. The document may indicate a preferred option.
- **Including 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.

Further information on the features of good discussion documents and consultation processes are summarised in the *Effective Consultation* section (see [Part 3](#)).

3.3 Supplementary Order Papers

From time to time, policy changes may be made to draft legislation that are outside the scope of the original RIS. When these changes are sought through a Supplementary Order Paper (SOP) that is submitted to Cabinet, the original RIS must be updated (or a new RIS prepared) to indicate how the changes affect the impact analysis—such as how the SOP alters the nature and/or magnitude of the impacts).

3.4 International treaties

In some cases, there may be legislative or regulatory implications that arise as a result of the completion and implementation of an international treaty. The RIA requirements apply to any proposals that may lead to a paper being submitted to Cabinet, which, in the case of international treaties, may include papers seeking Cabinet approval to enter into negotiations (ie, a negotiating mandate), to sign the final text of a treaty, or for a treaty to enter into force for New Zealand.

In accordance with the Cabinet Manual and Standing Orders 388-391, all multilateral treaties or “major bilateral treaties of particular significance” concluded by New Zealand require the preparation of a National Interest Analysis (NIA). When preparing an NIA for a treaty with regulatory impacts, the Ministry of Foreign Affairs (MFAT) adheres to NIA drafting guidelines produced in collaboration with the RIAT. Those guidelines require that, for treaties with regulatory impacts, the NIA also includes all the requirements otherwise considered in a RIS (becoming an “extended NIA”). A separate, standalone RIS is therefore not required when an extended NIA is prepared.

The [International Treaty Making booklet](#)³, which includes the NIA drafting instructions, contains detailed guidance about how the RIA requirements apply to treaties. For any questions regarding international treaties and arrangements, please contact the Treaty Officer in the Legal Division of the Ministry of Foreign Affairs and Trade (treatyofficer@mfat.govt.nz).

³ Available online at: <http://www.mfat.govt.nz/Treaties-and-International-Law/03-Treaty-making-process/>

4 Scoping the issue and planning the project: Preliminary impact and risk assessment (PIRA)

Completing a preliminary impact and risk assessment (PIRA) is the first step in the RIA process. The PIRA is a basic project plan for the RIA that the agency intends to complete before proposing recommendations to Cabinet.

4.1 What is a PIRA?

A PIRA is a document that is intended to:

- help agencies determine whether Cabinet's RIA requirements apply to a policy initiative for which they are responsible
- help agencies identify the potential range of impacts and risks that might be presented by the regulatory options for a policy initiative or review, so that they can be appropriately addressed in the regulatory impact analysis
- help Treasury policy teams determine the level and sort of policy engagement they wish to have with the lead agency on the initiative, and
- help Treasury confirm whether the nature and size of the potential impacts and risks warrant RIAT involvement in providing independent assurance on the quality of the RIS (the significance criteria).

4.2 The significance criteria

A regulatory initiative is considered to trigger the significance criteria if the option/s being considered are likely to have:

- significant direct impacts or flow-on effects on New Zealand society, the economy, or the environment or
- significant policy risks, implementation risks or uncertainty.

More detail on the types of impacts and risks to be considered is set out in the PIRA template (see [Annex 1.1](#)).

4.3 Process for completing the PIRA

Work on the PIRA should start as early as possible in the policy process. The PIRA should be signed off by the relevant policy manager with responsibility for the completion of the work or development of the proposal.

The PIRA should be provided to the relevant Treasury policy team (and copied to RIAT via ria@treasury.govt.nz) as soon there is enough information to make a call about whether the RIA requirements apply (primarily using information in the PIRA and discussion with agencies about potential impacts), significance, and whether RIAT involvement is required. This may not require definitive answers to all questions.

4.4 If RIAT involvement is required

RIAT provides independent quality assurance of RISs for regulatory proposals likely to have a significant impact or pose a significant risk. If RIAT involvement is identified as necessary through completing a PIRA, the next step is to engage with RIAT to determine the nature of their involvement in the policy development process.

RIAT has the discretion to allow an agency to retain responsibility, on a case by case basis, for providing assurance of the quality of their RIS even where the impacts or risks are viewed as significant. RIAT may decide not to formally assess the RIS for a significant proposal under the following sorts of circumstances:

- where the policy work has been planned (eg, was on the agency's regulatory plan) and the policy process is robust and has not been rushed
- where there is prior agreement between RIAT and the department on the policy frameworks, standards of evidence and types of impacts to be used
- where other relevant departments, agencies, groups or individuals who have expertise in the subject matter have been appropriately involved and consulted
- where the agency has demonstrated that it has robust in-house quality assurance arrangements.

The decision to allow an agency to undertake its own quality assurance of a significant proposal is not necessarily final. The conditions on which the decision is made will be set out and agreed with the agency. If any of the conditions change (eg, timeframes become compressed or additional policy options are included) then the agency must advise RIAT and the decision will be reviewed.

Annex 1.1

Preliminary impact and risk assessment

Purpose of the PIRA: A preliminary impact and risk assessment (PIRA) is intended to:

- Help agencies determine whether Cabinet’s Regulatory Impact Analysis (RIA) requirements apply to a policy initiative for which they are responsible.
- Help agencies identify the potential range of impacts and risks that might be presented by the policy options for a policy initiative or review, in order that these can be appropriately addressed in the regulatory impact analysis undertaken.
- Provide an initial plan for RIA processes and identify milestones, timeframes, and who to consult.
- Help Treasury policy teams determine the level and sort of policy engagement they wish to have with the lead agency on this policy initiative.
- Help Treasury confirm whether the nature and size of the potential impacts and risks warrant early RIAT engagement on RIA elements and involvement in providing independent quality assurance (QA) on the quality of the regulatory impact statement (RIS) that informs the policy proposals.

When to complete a PIRA: It should be started as early as possible in the policy development process (as soon as policy work commences). This includes processes such as reviews of policy or legislation where it is not known at the outset whether a regulatory option will ultimately be selected or preferred, but is one of the available policy options being considered.

How to complete it: Provide as much information as possible given the stage of policy development. **This may not require definitive answers to all questions**, and you may need to apply your judgement. Relevant supporting information may be attached. If there is insufficient information to enable Treasury to confirm “significance” at the initial stages of the policy process, the final confirmation of this may be deferred until later in the process.

Who to send it to: The PIRA should be provided to your Treasury policy team and copied to RIAT (email ria@treasury.govt.nz). Please also liaise with your agency’s RIA team or panel (if you have one).

Who to contact if you have any questions: Your Treasury policy team is your first point of contact for enquiries about completing the PIRA.

Section 1: General information

Name of the responsible (or lead) government agency:
Title of policy work programme or proposal:
If known, the title(s) of the main Act and/or Regulations that could be amended or created:
Agency contact name and phone number:
Date completed:

Section 2: Do the RIA requirements apply?

Do the RIA requirements apply?	Yes/No/Not sure
Is this policy initiative expected to lead to a Cabinet paper?	
Will this policy initiative consider options that involve creating, amending or repealing legislation (either primary legislation or disallowable instruments for the purposes of the Legislation Act 2012)?	

If you can answer “no” to **either** of these two questions, the RIA requirements do not apply. There is no need to complete a PIRA (though the questions might still provide useful prompts).

Additional exemptions from the RIA requirements	Yes/No/Not sure
If this initiative includes legislative options, are they covered by one or more of the following exemptions?	
<ul style="list-style-type: none"> • Technical “revisions” or consolidations that substantially re-enact the current law in order to improve legislative clarity or navigability (including the fixing of errors, the clarification of the existing legislative intent, and the reconciliation of inconsistencies) 	
<ul style="list-style-type: none"> • Suitable for inclusion in a Statutes Amendment Bill (if not already covered by the point above). 	
<ul style="list-style-type: none"> • Would repeal or remove redundant legislative provisions. 	
<ul style="list-style-type: none"> • Provides solely for the commencement of existing legislation or legislative provisions (this does not include changing the existing commencement date). 	
<ul style="list-style-type: none"> • Needs to be authorised in an Appropriation Bill, an Imprest Supply Bill. 	
<ul style="list-style-type: none"> • Is for a Subordinate Legislation (Confirmation and Validation) Bill relating to regulations that have already been made 	
<ul style="list-style-type: none"> • Implements Deeds of Settlement for Treaty of Waitangi claims, other than those that would amend or affect existing regulatory arrangements. 	
<ul style="list-style-type: none"> • Brings into effect recognition agreements under the Marine and Coastal Area (Takutai Moana) Act 2011 	
<ul style="list-style-type: none"> • Essential (the minimum necessary) in order to comply with <u>existing</u> international obligations that are binding on New Zealand. 	
<ul style="list-style-type: none"> • Has no or only minor impacts on businesses, individuals or not-for-profit entities (such as might be the case for certain changes to the internal administrative or governance arrangements of the New Zealand government, like the transfer of responsibilities, staff or assets between government agencies). 	

If all the legislative options associated with this policy initiative qualify for one of these exemptions, then the RIA requirements do not apply.

If claiming a full exemption, please confirm this assessment with your Treasury policy team. You do not need to submit a PIRA for this purpose, but you will need to provide information in support of this claim.

If some aspects of the legislative options for this initiative can stand independently from the rest, and qualify for one of these exemptions, then the RIA requirements do not apply to those aspects. Since a PIRA will still need to be completed and submitted to your Treasury policy team, it should note any important aspects of the initiative for which an exemption is claimed.

Section 3: Description and context

The policy issue

What is the intended scope of the policy initiative?

Brief description:

What are the main underlying policy issues/problems to which this policy initiative is responding (ie, the root cause of the problem)?

Brief description:

What is known about the magnitude of these policy issues/problems?

Brief description:

What is the type or nature of the evidence supporting the problem definition?

Brief description:

The policy process

Who has commissioned this work (ie, a portfolio Minister, an agency at the request of industry or the public, etc)? Is this initiative in your current regulatory plan? Who is responsible for its delivery?

Brief description:

What is the expected policy process, and expected timing of key milestones? *(Please indicate, as far as possible, intended timeframes for consultation, Cabinet consideration, drafting, and implementation)*

Are there any process or timing commitments, existing obligations, constraints, or previous Cabinet decisions that are relevant?

Brief description:

What consultation process is planned, and who will be consulted?

Brief description:

The policy process

If any established methodology or form of analysis is to be followed or incorporated, please identify

Brief description:

The policy options

Are there feasible non-regulatory options to consider? Is it possible that legislation is not required?

Brief description:

If the range of policy options to be considered is already constrained by existing government commitments, Ministerial directions, or previous Cabinet decisions, what are those constraints?

Brief description:

If this involves only delegated legislation, what is the legislative authority under which it must be made?

Brief description:

Which groups are might be noticeably affected (either positively or negatively) by the policy options being considered?

Individuals, families and/or households? Consumers? Employees? Businesses? Not-for-profit organisations (including charities, voluntary organisations and incorporated societies)? People who live in particular regions? Users of resources eg, recreational fishers, road-users? Members of particular groups of the population (eg, ethnicities, genders, age groups etc) Central government agencies? Local government? Other?

Brief description:

Section 4: Are the significance criteria met?

A regulatory initiative is considered to trigger the significance criteria if any of the options being considered are likely to have:

- Significant direct impacts or flow-on effects on New Zealand society, the economy, or the environment, or
- Significant policy risks, implementation risks or uncertainty.

Are there significant impacts?	Yes/No/Not sure
Will any policy options that may be considered, potentially:	
<ul style="list-style-type: none"> • Take or impair existing private property rights? 	
<ul style="list-style-type: none"> • Affect the structure or openness of a particular market or industry? <i>For example, assist or hinder businesses to provide a good or service; establish or remove a licence, permit or authorisation process; create or remove barriers for businesses to enter or exit an industry?</i> 	
<ul style="list-style-type: none"> • Impact on the environment, such as regulations that affect the use and management of natural resources? 	
<ul style="list-style-type: none"> • Have any significant distributional or equity effects? <i>For example, where significant costs are imposed or significant benefits conferred on different sectors of the population?</i> 	
<ul style="list-style-type: none"> • Alter the human rights or freedoms of choice and action of individuals? 	
<ul style="list-style-type: none"> • Have any other significant costs or benefits on businesses, local or central government, individuals or not-for-profit organisations etc? <i>For example impose additional compliance costs; introduce or alter government cost recovery arrangements; impact on New Zealand's international capital flows or trade including the flows of goods, services, investment and ideas to and from New Zealand; impact on the incentives to work or the mobility of labour, or to invest in education or skills; impact on resource allocation, saving or investment, fiscal costs to government?</i> 	

For the major types of impacts you have identified, please provide brief information about the nature and likely magnitude of the impacts (in whatever dimensions seem most useful and available).

Are there significant policy, design or implementation risks?	Yes/No/Not sure
Are any of the legislative options likely to be novel, or unprecedented?	
Is the evidence-base for the size of the problem or the effectiveness of different policy options weak or absent?	
Are the benefits or costs of the policy options likely to be highly uncertain? Are there obvious risks that need to be managed?	
Is the success of any of the options likely to be dependent on other policy initiatives or legislative changes?	
Are any of the legislative options likely to have flow-on implications for the future form or effectiveness of related legislation?	
Are there other issues with the clarity or navigability of, or costs of compliance with, the current legislation that it might be good to address at the same time?	
Do any of the legislative options have the potential to be inconsistent with or have implications for New Zealand's international obligations?	
Are there any issues arising in relation to New Zealand's commitment toward a single economic market with Australia? Please check with the Ministry of Business Innovation and Employment. There may be, for instance, issues relevant to the Trans-Tasman Mutual Recognition Agreement (TTMRA).	
Are any of the legislative options likely create or extend a power to make delegated legislation, or grant a broad discretionary power to a public body?	
Are any of the legislative options likely to include provisions that depart from existing legislative norms for like issues or situations? <i>These may include Bill of Rights Act and Privacy Act issues, fundamental common law principles, retrospective rule-making, creation of strict liability offences or burden of proof reversals, and matters affecting civil or criminal immunity. Please see the Legislative Advisory Committee Guidelines on Process and Content of Legislation.</i>	
Are any of the options likely to create, amend, or remove offences or penalties (including pecuniary penalties), the jurisdiction of a court or tribunal, or impact on court-based procedures and workloads?	
Has implementation testing and operational expertise been integrated into the plan for evaluating options?	
Is there a possibility that local government will be expected to implement, administer, or enforce any options?	
Are implementation timeframes likely to be challenging?	
Are the actual costs or benefits highly dependent on the capability or discretionary action of the regulator?	

Section 5: Agency assessment and Treasury confirmation

Agency's preliminary assessment	Treasury's Assessment
Do the RIA requirements apply to this policy process or proposal?	
Would any resulting regulatory proposal be likely to have a significant impact or risk and therefore require RIAT involvement?	

Part 2: Undertaking RIA

This section provides guidance on undertaking the regulatory impact analysis (RIA) that will ultimately be summarised in the Regulatory Impact Statement (RIS) accompanying Cabinet recommendations.

1 The Regulatory Impact Analysis (RIA) Steps

This section describes the key elements of good Regulatory Impact Analysis (RIA). These elements should underlie the development of any policy for Cabinet consideration to which the RIA requirements apply, and should be summarised in the RIS.

This guidance is detailed because RIA is expected to deal with various policy problems and a 'one-size-fits-all' approach is not possible. Good RIA is essentially just robust policy development within a transparent framework, so several factors will be relevant to particular regulatory proposals. The detail in this guidance should not suggest that a resulting RIS (as a **summary** of the RIA) should be lengthy and overly detailed.

2 Describe the status quo

RIA involves assessing one or more policy options against the situation expected to occur in the absence of any **further** government action or decisions (the status quo).

The description of the status quo should cover the following key features of the current situation.

2.1 Features of the market or relevant social arrangements

The description of the status quo should include consideration of the relevant prevailing market conditions or social arrangements. This may, for example, include expected demand and supply trends, and other features or characteristics such as relevant market participants or agents. This means identifying the producers, suppliers, retailers, consumers, beneficiaries, regulators, any other interested parties, and describing their interests.

RIA needs to be forward-looking in order to assess alternative options for dealing with a problem over time. It is therefore useful to identify how the status quo is likely to change over time without further intervention—rather than simply providing a static snapshot.

2.2 Existing legislation/regulations

The status quo should describe any existing legislation/regulations, or other relevant government interventions or programmes that are in place.

If there are non-regulatory, self-regulatory, or co-regulatory arrangements in place, these also form part of the status quo. The description should be detailed enough to enable an interested (but non-expert) member of the public to understand:

- who are the relevant parties and institutions—both public and private, regulators and regulatees, quasi-governmental, unions or clubs, and charitable organisations, etc
- what are the different incentives and observed behaviours of those parties and institutions, and
- what are the tools or resources those parties and institutions currently have available.

2.3 Any relevant decisions that have already been taken

Any relevant decisions that have already been taken should also be taken into account, including decisions that have been agreed by Cabinet but for which the legislation has not yet been passed.

If Cabinet has previously considered a proposal, for instance by directing or limiting scope for officials starting work on an issue which is in its early stages, prior decisions should be described in the status quo of the RIS. Previous related RISs should be briefly summarised and referenced so that the public can follow the overall RIA.

2.4 Confidence and supply agreements

Confidence and Supply agreements generally commit to specific policy options to achieve set objectives. These commitments are outside the Cabinet decision making process.

The analysis undertaken by Agencies in these situations usually focuses on design and implementation issues for the stipulated option. However, the RIS should at a minimum include information on:

- the merits of the policy objectives (if any) sought to be achieved by the specific commitment in the confidence and supply agreement
- the nature of the policy problem that is being addressed, and
- any alternative options for achieving the objectives / solving the problem that were not considered because of directions as to the scope of the policy process, and whether any of them might better achieve the objectives / solve the problem.

In some circumstances a full analysis will be both feasible and desirable—and may already have been undertaken by the Agency. In such cases, and where the issues at stake are significant, the RIS should include the full analysis. RIAT should be consulted where there is any doubt about the RIS to be prepared in these circumstances.

3 Define the problem and assess its magnitude

RIA requires a problem to be identified. Having *described* the status quo, the next task is to assess the nature and size of the problem associated with the expected outcomes in the absence of any further government action. A good problem definition will explain the gap between the current situation (what officials expect to be the status quo projected over the period of analysis) and the outcome that the agency is aiming for (as described in the objectives). Problems should be couched in terms of public interest, broadly considered.

A problem definition will be the *prima facie* case for regulatory intervention and the reason for discussing options. The problem should be able to be summarised in a pithy sentence.

3.1 Size of the problem

The problem definition needs to do more than identify the gap between status quo and objectives: it should discuss its size and importance. This involves identifying the *costs and benefits* of the current arrangements, including:

- the nature and probability of the adverse outcome/s that will arise in the absence of further government intervention (in addition to the interventions already in place), and
- who is likely to be affected by the adverse outcome, including how widespread it is likely to be (ie, how many individuals, groups, firms etc. are affected), what harm or injury is likely to occur, and the magnitude of these impacts.

Not everything can or should be valued in monetary terms, but quantification should occur to the extent possible. For example, if the problem is related to economic efficiency, how much is at stake? If equity-related, what is the current distribution of costs and benefits? If an environmental problem, what is the potential effect of not acting and what are the overall costs? This quantification should include aggregate figures (totals) to help put the issue in a wider perspective.

3.2 Distinguish between causes and symptoms of problems

The next step is to identify the **root cause** of the problem (not just the symptoms), for example market failure, regulatory failure, unacceptable hazard or risks, social goals/equity issues. Detail should be provided as to the nature of the problem—for example, if the market failure is a result of information asymmetries, the problem definition needs to identify who is unable to access what information and how their behaviour results in evidence of a problem.

The reason why the problem will not be addressed within existing arrangements or by private arrangements (such as individual contracts, market forces etc.) should be explained. If the problem relates to existing legislation or regulation, it should be made clear whether the problem is in relation to its **design** or its **implementation**, or both.

In practice, the status quo and problem may be inter-related and considered or discussed together. For instance, the problem may be best expressed by describing how policy objectives are not being met. However, the key elements of both should be addressed.

Identifying and diagnosing problems

Voluntary arrangements between parties are often the best way to promote the long-term interests of consumers, employees, entrepreneurs, investors, government and wider society. However, there are circumstances when voluntary transacting can fail. Good problem definition requires an understanding of the failures that can arise from voluntary transacting, and self- or co-regulatory initiatives, and government regulatory arrangements:

- **Imperfect competition**—where one or more party is able to control a market for their own benefit at the expense of consumers or other firms.
- **Information problems**—where one party to a transaction does not have the information needed to act in their best interests. In extreme circumstances this can lead to significant costs to many parties and the market being under-developed because of a lack of trust.
- **Externalities (spill-overs)**—where costs or benefits fall on people other than those who consume the good or service. This can lead to the over- or under-provision of the good or service, and
- **Public and mixed goods**—where a good or service is:
 - *under-supplied*, because it cannot be charged for
 - *under-consumed*, because consumers are being directly charged but their consumption is not incurring extra costs, (ie, it non-rivalrous), or
 - *over-consumed*, because there is free access to the resource but consumption still imposes costs.
- **Lack of clear property rights**—unclear, ill-defined, or poorly designed property rights can mean that parties do not bear the consequences or receive the rewards that result from their actions.

Self- or co-regulatory arrangements can go some way to correcting these failures, but there are risks that other problems are created. The regulatory body might be captured to promote the interests of its members at the expense of the public (rent-seeking), in particular where members have strong market power. Such arrangements may lack legitimacy and credibility (thereby undermining effectiveness), or lack the capability and capacity to deal effectively with new or emerging problems.

The problem may relate to current regulation and previous attempts to manage risks. The government can fail where it lacks the capability or information, or has poor incentives to do a better job than voluntary and self- or co-regulatory arrangements. As well as each of the above problems, direct regulation can risk leading to further problems with:

- **Unintended consequences**—by inducing behaviour or providing incentives that do not improve welfare
- **Inefficient regulatory enforcement**—in the absence of market pressures, there may be a risk of institutional failure. For example, regulatory activity might not reflect the current preferences or risk-tolerances of the public
- **Moral hazard**—making the market less responsive to competitive pressure by giving an implicit guarantee of government support or protecting incumbents from competition
- **Crowding-out**—a reduction in private economic activity due to complying with regulation
- **Rent seeking behaviour**—government involvement can open the door to political lobbying to be given a share of wealth that has already been created. As with crowding-out, this activity distracts from creating new wealth.

4 Define the objectives

The objectives should summarise the Government's policy intentions, but also inform how any potential regulatory solution will be evaluated for effectiveness.

The objectives, outcomes, goals or targets that are sought in relation to the identified problem should be described. These may be a restatement of the current policy objectives if they are relevant to the status quo, or they may be particular to the problem identified in the previous section—it is important to state the objectives of any current policy arrangements and whether those objectives have changed as a result of identifying a problem. If there is an authoritative or statutory basis for undertaking the analysis eg, legislative requirement to annually review an item of regulation, this should be explained.

The objectives should be clear and should not pre-justify a particular solution. They should be specified broadly enough to allow consideration of all relevant alternative solutions. It may be appropriate to distinguish between primary and subsidiary objectives. The objectives should focus on the desired final outcome rather than the means of achieving it, but should allow the consideration of all feasible alternative options. If they do not, the objectives are likely to be too narrow.

There is usually more than one policy objective, meaning there may be potential for conflict between objectives. Balancing objectives may reflect that regulating is not costless, or that there are multiple outcomes expected by society. It should be clear how trade-offs between competing objectives are going to be made and the weightings given to objectives—not just those in direct conflict. The Treasury's [Living Standards Framework](#) provides one example of how to think about trade-offs and how to incorporate social aims into regulatory objectives⁴.

There may also be a hierarchy of objectives, particularly when the desired high-level policy outcomes cannot be directly measured. More specific assessment criteria and observable targets should be used to measure progress towards achieving policy objectives. If the outcomes are subject to constraints, for example if they must be achieved within a certain time period or budget, then these should be clearly specified in the statement of objectives.

Stating the objectives should also provide scope for the subsequent impact analysis. What questions will officials be asking themselves (and what information will Ministers need) when ranking options?

⁴ The Treasury's Living Standards Framework can be found online at: <http://www.treasury.govt.nz/abouttreasury/higherlivingstandards>

5 Identify the full range of feasible options

Identify the full range of policy options that may fully or partially achieve the stated objectives and thereby address the identified problem. This should include both regulatory and non-regulatory options. Within regulatory options, a representative and pertinent spectrum of viable regulatory forms should be considered.

If the range of options has been previously limited by Cabinet or by specific Ministers, this should be made clear as part of describing the status quo.

If the range of feasible options for responding to an identified problem has been restricted without a formal Cabinet decision, the reasoning behind this direction should be explained by setting out the policy objectives in the RIS. Where policy work has been limited without detailed analysis, the agency may need to outline the implications of this in the RIS, and in particular the Agency Disclosure Statement.

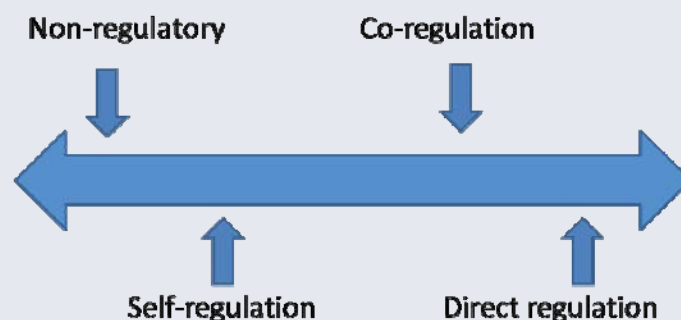
It is not always possible to analyse every possible combination or permutation of policy tools within options—there might be an infinite range of options. Unless past decisions limit the set of options that can be considered, RIA should identify and describe:

- the status quo scenario projected forward—where no further regulatory changes occur (behaviour may still be expected to change over time)
- one or more non-regulatory options (eg, education, industry self-regulation)
- one or more regulatory options, and
- what would happen without regulation or government intervention (if different from the status quo).

If deliberately excluding feasible options, or options that affected parties are likely to think are feasible, the RIA (and subsequent RIS) should explain why. If these exclusions or restrictions would lead to any shortcomings in the analysis, or increase the risks or making the decision, this should be noted in the Agency Disclosure Statement (ADS) within the subsequent RIS.

Regulatory alternatives

A variety of regulatory and non-regulatory instruments are available to achieve the government's objectives. Selecting the right instrument will depend on the problem to be addressed and the overall policy objective.



Non-regulatory options include education campaigns and subsidies. These options seek to influence individual preferences but do not guarantee that changes in behaviour will occur. Examples include:

- drink-driving advertising campaigns that seek to reduce drink driving rates, and
- home insulation subsidies that seek to encourage home insulation improvements.

Self-regulation options can be used where a group can exert control over its membership, for example an industry body regulating its members. This can include standards used by industry members, for example the Advertising Standards Authority's *Code for Advertising to Children*, or establish a consumer complaints mechanism, for example the Insurance and Savings Ombudsman.

The government may also use co-regulatory options, which combine elements of self-regulation and government regulation. Co-regulation involves government oversight or ratification of self-regulatory instruments.

Alternatively, the government can directly control outcomes through regulation. For example, occupational licensing could be introduced where only licensed individuals are able to perform particular tasks, such as builders. Or, individuals could be required to be licensed before they are able to work in a particular profession, such as working as a physiotherapist.

Mandatory standards and codes could be introduced to control the outcome or process used. Performance based standards and codes specify the outcome that is to be achieved. In contrast, prescriptive-based standards and codes specify the technical detail around how the outcome is to be achieved. For example, if the government wished to improve vehicle safety it could introduce a standard that drivers must have a 90% survival rate in a head on crash at 50 km/h (performance based). Alternatively, the standard could require that cars have seatbelts and front and side airbags (prescription).

Regulatory options can also seek to influence behaviour, such as making information disclosure mandatory (eg, nutritional information on food packaging). This does not require consumers to make healthy food decisions but provides more information to assist their decision making.

Alternatively, the government can regulate more directly, by prohibiting certain conduct or actions. Drink driving offences are an example of this, where driving with over 80 milligrams of alcohol for every 100mls of blood is prohibited.

In many cases, there will not be one answer and a number of instruments used in conjunction may be the most effective way of addressing the problem. For example, education campaigns can be used to increase compliance with legal requirements such as the blood alcohol limits while driving.

5.1 Levels of analysis

Generally speaking, the level of analysis undertaken (detail and depth) should be commensurate with the magnitude of the problem and the size of the potential impacts of the options being considered. There is often judgment required to determine how much analysis is appropriate in particular circumstances and the Regulatory Impact Analysis Team (RIAT) can provide advice on this.

Sometimes it is appropriate to narrow down the initial range of options, and undertake comprehensive analysis on a more limited set of options, as this enables analytical resources

to be focused on those options most likely to deliver net benefits⁵. In these circumstances, the objectives against which the full range of options was assessed should be explained, and the way they were applied made explicit (eg, if any objectives were weighted more highly than others). An example of this process is where a multi-criteria analysis⁶ is employed to narrow down the set of options subject to full cost benefit analysis. Initial options may also be narrowed down through early consultation processes.

New regulation should not conflict with or duplicate existing legislation or regulations. It is therefore also important to consider how a regulatory option will interact with the stock of regulation, including whether there is scope to reduce or remove any existing regulations.

6 Analyse the options

Having identified the full range of feasible options, the next step is to analyse the costs, benefits and risks of each option. The analysis needs to show how each option would alter the status quo, which option is likely to be the most effective for solving the problem, and which option has the highest net-benefit.

Options analysis should be the fundamental concern of any decision about whether to regulate and in what way. All options analysis must aim to answer:

- How does the option broadly measure up against the objectives? Answering this question may require a full impact analysis of each option.
- What is the net impact (or net benefit or cost) of taking any of the available options?
- What are the distributional implications of the options being considered? Options analysis requires evidence and analysis of who wins and who loses—and by how much.

The options analysis should structure the analysis on the different elements of the problem. This may require identifying the particular decision-points and different policy tools within an option that might address discrete elements of the broader problem. This requires an appropriate framework for analysis.

Where the problem is related to particular risks, these should have been clearly identified. The options should describe how those risks would be:

- voluntarily accepted by those bearing the consequences of any risk, eg, requiring participants to sign waivers of liability
- transferred to other parties, eg, making certain parties liable for consequences of their actions (such as advice to uninformed clients)

⁵ If there is a preferred option, the greatest effort should go towards analysing this, and the second-most preferred option.

⁶ Multi-criteria analysis is a way of appraising and ranking policy options against a given set of objectives or criteria. It is not an alternative to cost benefit analysis since it evaluates options' likely effectiveness in achieving the objectives—rather than the overall efficiency from a New Zealand net-public benefits perspective.

- mitigated (reduced in likelihood or consequence), eg, by mandating safety equipment to minimise the injuries that could be sustained, or
- avoided, eg, prohibiting the activity which could lead to the risk.

6.1 Identify the full range of impacts

This stage involves identifying the full range of impacts, and providing a qualitative description or explanation.

Impacts can be positive or negative (ie, include both costs and benefits), and include economic, fiscal, compliance, social, environmental and cultural impacts. They include direct and indirect (flow-on) effects; one-off and recurring or on-going impacts. RIA needs to identify whether an option would increase or decrease the net-benefit to society compared with the status quo.

Discrete impacts should be separately described and accounted for:

- **Economic impacts** include the dynamic effects on overall welfare and reflect changes to overall production and consumption. They are relevant to gauging overall efficiency by considering whether the behaviour of consumers, business, and the community might be:
 - a) Altered positively to achieve the RIA objectives or create other net-benefits to society, or
 - b) Distorted with negative consequences—creating opportunity costs. Welfare losses can arise from regulation which impairs competition, stifles innovation, artificially constrains pricing or valuation decisions, or generally restrains the economic activity of individuals and firms (eg, by distracting people from more productive endeavours).
- **Fiscal costs** are borne by public agencies (and ultimately, the taxpayer) in administering the regulation or law. They include the costs of implementation, formulating standards, monitoring and enforcing compliance, and adjudicating disputes or administering appeals.
- **Compliance costs** are the direct costs that regulated parties will face in order to comply with regulatory options. They include the cost of collecting and reporting information, equipment purchases and the development of new processes and reporting systems.

Compliance costs are usually the most prominent and identifiable impacts. However, while they may affect individual or group behaviour, compliance costs may be less significant from a net economic benefit (society-wide) point of view. Cost estimates in options analysis are likely to be subject to assumptions about how regulatory options might be implemented or how businesses might choose to comply.

Consideration should be given to ways in which costs, particularly compliance costs, may be reduced or minimised. There may be trade-offs between compliance costs and the administrative costs to government—these should be explicitly identified. For instance, greater flexibility in the ways regulated parties could comply with regulatory requirements may minimise their costs, but may increase the costs of administering the regulation. The key informational requirements are set out in the following box.

Key informational requirements for identifying compliance impacts

The specific costs on regulated and third parties should be separately identified from fiscal and wider economic impacts of regulation and should be tested with affected parties through consultation. RIA aims to make agency assessments of compliance cost impacts more transparent by identifying:

- One-off costs, such as acquiring sufficient knowledge to meet the regulatory obligations, retooling production processes, purchasing or leasing additional equipment and buildings, legal/consultancy fees and training expenses.
- Recurring and ongoing costs, such as staff costs or time, consumable materials, inspection fees/licences, costs imposed by enforcement processes, form filing (that is, costs arising from the need to devote additional time and resources to satisfying regulatory requirements).
- The parties likely to be affected. If the costs will be borne by businesses, the sector and sizes of firms should be identified to give an indication of magnitude.
- An assessment of the risks or uncertainties associated with cost estimates.
- Overlapping compliance requirements with other agencies or regulatory regimes. It may be possible to design compliance processes so that information is shared between two related compliance processes.

6.2 Analyse the incidence of impacts

The incidence of the impacts of each option also needs to be assessed, that is, what would happen as a result of each option and who would be affected. While it may be appropriate to consider 'who' before 'what' or 'how', both the impacts and their incidence should be identified **before** the individual impacts are valued to determine net-benefits.

The different types of people and groups relevant to the analysis will vary depending on the options being considered. They may include:

- individuals, families and/or households
- consumers
- employees (including relevant contractors and sub-contractors)
- businesses (including those upstream and downstream in the supply chain)
- people who live in particular regions
- members of particular groups of the population (ie, ethnicities, genders, age groups etc)
- users of resources eg, recreational fishers, road-users
- not-for-profit organisations (including charities, voluntary organisations and incorporated societies)
- local government, and/or
- central government agencies.

It may be necessary to further distinguish within these groups (eg, within businesses by firm size or industry sector). The proportionate incidence of costs may be of particular relevance, eg, the impact on small businesses compared to total/average firms. The redistributive effects on income or wealth may also be of concern.

Assessing the impact of options on different parties should consider the competition effects—this may be done explicitly in evaluating an option against a policy objective (to ‘promote competition’ for instance), or as part of the analysis of who bears or receives costs and benefits. If an option is likely to have effects on competition, the RIA should consider (and the RIS should summarise) the impacts on:

- **Incumbent Firms**—Will the option (eg, a proposed regulatory tool) affect companies differently, for example altering competitive relationships between them in a way that it will reduce competition in the market as a whole?
- **Entry of new firms**—Will the option restrict the entry of new firms? Will it affect competition in the long term?
- **Prices and production**—Will the option put upward pressure on prices by imposing new costs to producers?
- **Quality and variety of products and services**—Does the option include minimum standards that will reduce the range of price or performance combinations in the market?
- **Market growth**—Will the option affect the potential for parties, or the number of parties, to expand supply and meet more demand over time?
- **Related Markets**—Does the option affect related markets? That is, does it have effects on the production line?

6.3 Analyse the magnitude of impacts—and whether they are costs or benefits

Impacts should be quantified, and expressed in dollar terms (monetised) to the extent practical. This requires determining the number of individuals, firms or groups affected, the size of the impact on each of these, and the total impacts (ie, number affected multiplied by the size of impact). Quantification helps examine the costs of regulation and tests the assumptions and judgements involved in the formulation of policy advice. Monetisation enables comparison of options against each other and, by providing a common analytical denominator it helps avoid double-counting costs and benefits.

Quantification and monetisation is not always possible. In these cases, the costs and benefits should be described as fully as possible, drawing on any available qualitative evidence. Dollar figures should not be “invented” for their own sake.

All assessments of costs and benefits whether quantitative or qualitative, should be based on evidence, with data sources and assumptions clearly identified. If, for example, qualitative benefits are considered to outweigh monetised costs, the basis for this judgement should be explained.

Net impacts may not be easily expressed as monetary values, but the impact analysis should attempt to conclude what the **net** benefit (or cost) of each option is. Put simply, the net benefit (or cost) is the difference between total costs and total benefits.

In some cases, for example where costs and benefits will occur over many years, it may be helpful to identify a net present value (NPV) of the various options. The NPV is the sum of discounted net cash-flows, ie, the present value of costs less the present value of benefits. These concepts and how to calculate them are explained in detail in Treasury's [Cost-Benefit Analysis Primer](#).⁷

It is crucial when evaluating net-impacts of each option to avoid double-counting. Some costs borne by certain businesses may be passed onto consumers, but the impact considered in the CBA should be the first order impact on businesses, rather than the second order impact on consumers. The likely flow-on effect on consumers should be described separately in terms of transfers and distributional implications—not quantitatively added to the business impact. Please see Treasury's [CBA Primer](#) for guidance on quantification.

6.4 Risk assessment

RIA requires an assessment of risks alongside agencies' conclusions about the relative merit and likely net benefit of the options. Some important types of risks to consider are set out in the Preliminary Impact and Risk Assessment template (see [Annex 1.1](#)).

Risks should be expressed in terms of how exposed each option is to future uncertainty. Some form of sensitivity or scenario analysis should be presented in the RIS. A qualitative description of any risks and uncertainties—particularly for intangible costs and benefits—should also be given.

Risks should be identified for each of the affected parties. These might include the likelihood of compliance or of expected costs or benefit actually accruing. It might not be possible to estimate this probability with much precision—that is, there may be instances of true uncertainty. In that case, a risk analysis should assess the worst-case and best-case scenario, and comment on the likelihood of these extreme events.

Presenting the Impact Analysis

Separate rows or detailed descriptions in the body of the RIS' option analysis may be required to summarise how the different costs and benefits are borne by which parties. There are multiple possible tables that could be used to present the analysis, but below is one example:

Party	Benefits	Costs	Net impact	Risks <i>(and likely effect on impacts)</i>
Party 1	+	-	+/-	Describe
Party 2	+	-	+/-	Describe
Party 3, etc...	+	-	+/-	Describe
Total (net NZ)	<i>Total benefits</i>	<i>Total costs</i>	<i>Net NZ welfare</i>	<i>Likelihood of net impact</i>

⁷ The Cost-Benefit Analysis Primer can be found online at: <http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis/primer>

An alternative way of presenting risks or uncertainties may include expressing net impacts as adjusted by a probability value. Expected values are calculated by multiplying the magnitude of an impact by the probability that it will actually be revealed. This may be a useful way of incorporating risks into the options analysis and is ideal where there is good quantitative evidence of potential impacts.

Where it is difficult to be precise about probabilities, colour-coding has previously been effective to show how confident an Agency is about projected impacts in an options analysis table.

The specific costs, benefits, and risks may be difficult to identify, and could be more accurately described as positive or negative ‘impacts’. Where this is the case, the relative effectiveness of alternative options may need to be assessed in terms of how parties’ behaviour might change. Incentive analysis is one method of comparing each option with the status quo. A simple framework is presented as an example below. This is another way of describing particular impacts (in this case behaviour)—but note that it may not be useful for capturing the total or net effects of an option.

	Incentive under Status Quo		Incentive under Option 1 (etc...)	
	Current Behaviour	Why?	Likely Behaviour	Why?
Party 1				
Party 2				
Etc...				

7 Consultation

The purpose of consultation is to provide confidence about the workability of proposals and that options have been properly considered. This section covers the basic process requirements for RIA consultation—see *Effective Consultation* ([Part 3](#)) for general guidance.

To meet the RIA requirements, agencies proposing new regulation must demonstrate consultation with affected parties on the problem definition, the range of feasible options, and the impacts of the options. Consultation can be inadequate for a number of reasons, including:

- when affected or interested parties are not consulted (eg, not consulted at all or unrepresentative consultation, such as where only large organisations are consulted), and
- when consultation processes are ineffective (eg, consulted parties not given enough time to respond, important issues not consulted on, consultation documents not promoted widely enough).

The magnitude of the proposal, including who is likely to be affected determines who and how to consult—more consultation is required if the proposal has wide-reaching impacts.

In most cases, and particularly for significant proposals, there should have been material consultation before the RIS is drafted. The draft RIS nevertheless provides another vital basis for consultation, both with affected parties and with government agencies. The RIS format (which follows the RIA framework) also provides a useful vehicle for providing advice to the portfolio Minister, during the course of policy development.

The draft RIS should therefore be circulated for comment to relevant government agencies. Ideally, this should be done before the Cabinet paper is prepared. Otherwise it must be circulated with the draft Cabinet paper. It must also be included with draft Cabinet papers when they are submitted to Officials' Committees.

7.1 Who to consult

In addition to consultation with affected parties, a number of government agencies may need to be consulted, depending on the nature of the option or proposal.

For guidance on which departments require consultation on particular issues, see this CabGuide section on consultation with government agencies⁸. It does not provide a complete list of consultation requirements, but is intended to assist officials in identifying the departments they should consult.

For regulatory proposals, key government agencies to consult (as well as the relevant Treasury policy team) include the following:

- The **Ministry of Justice** (MoJ) is responsible for vetting proposals for consistency with the New Zealand Bill of Rights Act 1990, MoJ must also be consulted on proposals that potentially create or alter criminal offences, sanctions, or penalties.
- The **Ministry of Foreign Affairs and Trade** (MFAT) has certain obligations with respect to ensuring New Zealand's compliance with international agreements to which we are a Party. It is therefore important to consult MFAT where a regulatory proposal could affect New Zealand's international obligations.

These obligations include the Agreements of the World Trade Organisation (WTO), Closer Economic Relations (CER), free trade agreements, etc. Where a proposed regulation affects, or may affect traded goods and services, or foreign investment, the advice of the Ministry should be sought on whether the proposed regulation is consistent with these obligations. Even where proposed regulation is consistent, there may be an obligation to notify an international organisation or a trading partner of the proposed measures and allow them to comment. The usual timeframe for comments is 60 days.

- The **Ministry of Business, Innovation and Employment** (MBIE) should be consulted on proposals that may impact on businesses, particularly those that impose compliance costs and direct costs. MBIE should also be consulted on regulatory proposals that have Trans-Tasman Mutual Recognition Agreement (TTMRA) implications.

The TTMRA is a horizontal arrangement that impacts on a wide range of non-specified areas and is predicated on a number of principles, including comprehensiveness (there should be limited exceptions) and mutual recognition principles (as opposed to *harmonisation* principles). Judgments need to be taken on a case by case basis taking into account both trans-Tasman and domestic factors. Judgments should also be informed by the RIA requirements (as required by the Council of Australian Government (COAG) Principles and Guidelines for National Standard Setting and Regulatory Action).

⁸ <http://cabguide.cabinetoffice.govt.nz/procedures/consultation>

- For matters relating to **local government**, or potential regulatory options that may be implemented or enforced by local government agencies, please refer to the [Department of Internal Affairs' Guidelines](#) for which entities to engage with directly.

8 Conclusions and recommendations

It is crucial for RIA, and particularly for the summary of the analysis in the RIS, to clearly explain what decisions are required, what choices are available, and what stage of the policy process the RIA reflects. Failing to clearly articulate the difference between the status quo and the outcome that is being presented via the Cabinet recommendations (either the preferred option or any of the alternatives) will limit the transparency of the RIA.

There are various ways of summarising and presenting the outcomes of options analysis. Summary information to convey includes:

- For each option, a **summary of the main costs, benefits and risks** and overall (net) impacts, in relation to the status quo. This should include aggregates (eg, economy-wide totals).
- Key **assumptions underlying estimates of net benefits**. For example, the assumptions around expected compliance rates.

The usual methods of presenting convincing options analysis in a RIS to meet the RIA requirements include:

- cost-benefit analysis (CBA) if feasible—an assessment of net-benefits including quantitatively, and if necessary qualitatively, estimated impacts (see Treasury's [Cost-Benefit Analysis Primer](#))
- cost-effectiveness analysis, if feasible—to determine the least cost method of achieving a policy objective or standard, and
- incentive analysis—if an option's design is intended to change the behaviour of certain groups.

Any conclusions regarding the impacts of different options should ideally be expressed in terms of net present values (NPVs) over a reasonable time-horizon. Any weighting of risks should also be made explicit. That is, it should be made clear how trade-offs have been made (eg, between a high-risk/low cost option, and a low-risk/high cost option).

The [OECD Introductory Handbook for Undertaking RIA](#) contains greater detail about these methods⁹. In each case, the aim is to compare the likely situation under the status quo with each option and conclude which option is preferred according to the objectives and a judgement about net-benefits. While there should be enough impact analysis to be able to compare options, a greater level of effort should go into analysing the impacts of the preferred option and the recommendation in the Cabinet paper (which may be different).

⁹ Available online at: <http://www.oecd.org/gov/regulatory-policy/44789472.pdf>

It is unlikely that a RIS or discussion document can meet the RIA requirements if no clear methodology for assessing options has been explained, or if the analysis has not been articulated convincingly to inform decisions.

Presenting a summary of the options analysis

There are multiple ways of summarising the RIA in a RIS and the presentation should be tailored to how the option has been described. For example, different parts of the problem and option may need to be described separately. A conclusion about the preferred option is not always required or possible, but the RIS requires at least a brief, clear statement to summarise options and set out the evidence base on which a decision would rest on.

A simple table can be a useful way to organise the options, structure the summary of the options analysis, and describe the net-benefits (efficiency) alongside the options' ability to achieve the stated policy objectives (effectiveness). This is just one of many potential example tables for summarising the results of RIA.

Options	Objectives	Impacts		Overall Assessment
	<i>Are they met? How?</i>	Net Effects	Risks	<i>Preferred? Why?</i>
Option 1	Describe	+/-	Describe	Describe
Option 2	Describe	+/-	Describe	Describe
Option 3	Describe	+/-	Describe	Describe

9 Implementation

RIA requires consideration of how the preferred option would be implemented if agreed. If the option being presented to Cabinet is different, the RIA should also include consideration of how that option could be implemented.

Choices around the implementation and enforcement of a regulatory option can have a major influence on expected compliance rates and whether the expected costs and benefits will materialise (ie, the likely effectiveness of the regulation). Significant costs can be incurred during the implementation stage (such as the costs of monitoring and data collection) so key parameters should be included in the analysis of the costs and benefits of options.

RIA should cover the entire implementation and enforcement stages of the policy by describing the impact of different choices around enforcement strategy on costs and benefits (expected compliance and effectiveness). Consideration should also be given as to how enforcement costs will be funded—although the appropriate level of analysis of implementation will depend on the stage of the policy development process and the magnitude of impact.

It is therefore important to consider some practical implementation issues before key policy and design choices are taken. To the extent that implementation design issues are not covered in the description and analysis of options and impacts, specific implementation considerations include:

- **Administration** issues, such as which agency will implement and administer the option and how it will function.

- **Timing and transitional arrangements** eg, delayed or gradual introduction of new requirements, provision of interim assistance.
- **Compliance costs minimisation strategies.** What implementation strategies will be required, such as an education campaign, the use of electronic technology, form design, advisory services and testing with stakeholders? Is there existing regulation that can be reduced or removed to prevent overlap?
- **Implementation risks** and their potential impact on the effectiveness of an option. Strategies for mitigating these risks should be explained.
- **Information** that regulated parties will require in order to comply with the regulation, and how this will be provided (eg, whether there is opportunity to rationalise or “piggyback” on existing information sources or methods of communication).
- **Enforcement strategy**—how compliance will be enforced, who will undertake this, whether there will be sanctions for non-compliance (eg, warnings, fines, licence suspension, prosecution, and whether there will be gradations of sanction depending on the level/severity of breach), the suitability of risk-based enforcement strategies.

RIA also needs to establish plans for oversight and operational safeguards. Who could (and who will) be best placed to make informed judgements about the operation of the regulatory regime, the enforcement of rules, and the performance of the regulator? These may not be the same groups, but all affected parties should be considered for their likely interest and exposure to regulator discretion and behaviour

The plans for how stakeholders are expected to continue engaging with agencies should also be clearly articulated so that stakeholders can have an indication of likely compliance costs. Imposing information and reporting requirements can create costs that are difficult to quantify without information from affected parties through consultation.

It is important that Agencies strike the right balance between collecting the necessary information to meet their responsibilities to the public, while not requiring information that is unnecessary or unavailable. Agencies and relevant regulators should only collect information essential for enforcing rules or monitoring regulatory objectives and behaviour. They should also ensure that processes are in place to only collect information once—not multiple times redundantly.

The Department of Internal Affairs (DIA) has published [*Achieving Compliance - A Guide for Compliance Agencies in New Zealand*](#) which contains more detail about implementing policies.

The importance of implementation

The prevailing view has been that the implementation of legislation is “something that regulators do”, once the law is passed. This view is changing, as we increasingly recognise that how regulation works in practice has as much to do with factors that influence implementation as the law itself, and these factors can and should be taken into account in the policy development process and regulatory impact analysis.

There are two distinct phases to implementation:

- the initial phase when a new law is introduced, and
- the ongoing administration and review of the law.

The initial phase has distinct characteristics as it is at this point that historical behaviours are required to change in line with the expectations underlying the law. Behaviours are a function of both attitudes and capabilities. In addition, it is often the case that the behaviours of more than one group need to change. Experience suggests that the behaviours that must change to achieve the objectives of the law are often path-dependent and can be deeply embedded, and we typically under-estimate the effort required to effect change. Therefore, we need to allow sufficient time for implementation, to adopt appropriate strategies to facilitate and manage the change process, and undertake sufficient ongoing monitoring and evaluation.

The questions that should be asked at the outset include:

- What groups will be affected by this law (this will bear on the analysis of the status quo; key groups include producers, consumers, regulators, standards bodies etc)?
- What behaviours would we expect these groups to demonstrate if the law is to achieve its intended objectives? Bear in mind that actors respond to their “complete” regulatory environment, which may involve other areas of regulation and legislation than the policy question at hand.
- What might act as a barrier to behavioural change? Put yourself in the shoes of the affected parties – what incentives are in place to influence their behaviours?
- What strategies are likely to work best during the implementation phase to reduce these barriers? This will include consideration of appropriate transition arrangements.
- What monitoring and evaluation strategy is required to identify and address emerging issues that are affecting the effective implementation of the law?

When considering the factors that influence the administration of the law on an ongoing basis, it is important to note that interventions that do not deliver on their intended objectives may reflect poor strategy choice by the regulator rather than the rules themselves. There are two key factors to consider in the analysis:

- 1 Regulators are always in the situation of allocating limited resources. In effect they must make hard choices about where to invest their regulatory capability. Risk-based frameworks are most commonly used today to make resource allocation decisions. In effect these require regulators to make an assessment of the likelihood and consequences of certain adverse events happening, relative to the cost of mitigating them, and use this information to prioritise activity. Dealing with uncertainty is an important dimension of risk-based regulatory action.
- 2 Regulated entities are not homogenous. A strategy that works best for one group may not be effective or necessary for another.

Given these two factors, in addition to revisiting the factors and question outlined above, the questions we should also ask at the outset include:

- Does the proposed law permit risk-based decision making by the regulator?
- Can we be assured that the regulator will take a risk-based approach?
- Does the regulator have the statutory tools to take a “fit for purpose” approach to enforcement?
- Can we be assured that the regulator will take a “fit for purpose” approach?

10 Monitoring, evaluation and review

RIA must establish the agency's plans for monitoring, evaluating, and reviewing the performance over time. The key questions are:

- How will the Agency determine when and whether the regulatory changes have performed well?
- How will the Agency assess whether the preferred option continues to have a greater net-benefit than alternatives?

While the plans for monitoring the implementation of the preferred option should be summarised in the RIS, it is also important that any new regulation is monitored and periodically reviewed to evaluate whether the option is the preferred solution to the particular policy problem over time. Such monitoring and evaluation helps to ensure that new regulations are working as expected (delivering the anticipated benefits at expected costs), that there have been no unforeseen consequences and they continue to be necessary as circumstances change and evolve.

When new regulatory options are being proposed, it is important to have a clear understanding of the channels through which the intervention is expected to generate the intended benefits. Analysis needs to consider how effectiveness will be measured: what indicators will be used; what data will be required; how this information will be collected, and by whom. As noted above, monitoring and evaluation involves costs, which should be factored in to the analysis of options.

On-going or periodic consultation with stakeholders may be appropriate, in which case the arrangements for this should be agreed. It may be appropriate to establish a feedback mechanism (eg, a way for stakeholders to ask questions or lodge complaints). Regular, public reporting on the effectiveness of the regulation may also be considered.

Plans should also be made for how and when the regulation will be reviewed. Agencies should consider committing to a periodic review of particular regulatory interventions, either through a sunset-review clause in the regulation itself, or through committing to collect and monitor information for evaluating regulatory performance. Reviews should be reported and consulted on with a view to ensuring regulation remains fit for purpose.

Reviews should consider the following issues:

- Is there still a problem (and is it the one originally identified)?
- Are the objectives being met?
- Are the impacts as expected? Are there any unforeseen problems? Are there any indirect effects that were not anticipated?

Is intervention still required? Is the current intervention still the most appropriate, or would another measure be more suitable?

Part 3: Effective Consultation

This section provides guidance on how to conduct effective consultation and tips for producing meaningful, clear discussion documents, for regulatory proposals.

1 The purpose and implications of consultation

The purpose of consultation is two-fold: to gain information to assist with policy development; and to inform stakeholders about what's happening. This section contains explains the key features of effective and efficient consultation, and provides general guidance for preparing discussion documents that meet the Regulatory Impact Analysis (RIA) requirements.

1.1 The value of consultation to good RIA

Undertaking consultation during the policy development process can result in better quality regulatory proposals that are more likely to achieve their objectives. Having a consultation process acknowledges that those who are going to be affected by regulation may have access to more and better information about the real world impacts of proposals than the government officials who are developing them. This information can be critical to developing regulatory proposals that maximise the benefits, minimise the costs and avoid unintended consequences. Consultation therefore provides an important safeguard against regulatory failure.

The practical benefits of consultation include:

- better information, contributing to better quality regulatory proposals
- increased scrutiny of officials' analysis and advice, allowing potential problems with a proposal to be identified early
- durability as better designed policies are less likely to need amendments once introduced
- increased public buy-in/acceptance as stakeholders are more likely to accept a proposal they have been involved in developing, and
- improved understanding and increased compliance (therefore improved regulatory effectiveness).

1.2 Costs and risks

While there are a number of benefits from consultation, there is also a risk that the consultation process will not achieve the desired outcomes. Policy makers need to consider who they are consulting and what they are consulting on to ensure that the process is effective and efficient.

Poorly designed consultation can be time consuming (both for stakeholders and officials) and fail to improve the policy design. Over-consulting stakeholders creates a risk of consultation fatigue where stakeholders are disinclined to be involved in future consultation processes. If the consultation process is poorly targeted or vague, the feedback received from stakeholders is unlikely to significantly improve policy.

1.3 Timing

The benefits from consultation arise throughout the policy process: from correctly identifying the nature and source of the problem and identifying feasible alternative options and the associated costs, benefits and risks; through to practical design and implementation issues.

When designing policy, it is important to ensure that the policy addresses the source of the problem rather than the symptoms and is correctly targeted, to avoid “over-regulation”. Stakeholders often have better access to empirical information on the size of problem as well as day-to-day experience with the nature of the real issues. In addition, stakeholders’ practical experience can help identify potential unintended effects that policy makers have not considered. Stakeholders may also suggest more practical solutions to achieve the policy objectives.

As consultation can add value at all the various stages of analysis, it is important that for it to be considered and planned for at the very outset of the policy development process. Undertaking consultation late in the process limits the benefits that can be gained, as it can be too late to substantially alter the policy design.

What does efficient and effective consultation look like?

Essentially, good consultation is fit for purpose and tailored to both the nature and magnitude of the proposals, and the needs of stakeholders. One size does not fit all.

Principles for effective and efficient consultation have been developed and published by a number of organisations. A summary of these is provided in the following table.

Features of efficient and effective consultation	
Continuous	Undertaken throughout policy development process.
Timely	Realistic timeframes for stakeholders to respond. Undertaken early enough to have an impact on policy design.
Targeted	Need to consult relevant groups, including Māori.
Appropriate and accessible	The way the consultation is carried out should be tailored to the information needs and preferred engagement styles of those being consulted such as email, meetings and written submissions. It should also be scaled to the magnitude and proposed impact of the proposal.
Transparent	Stakeholders should understand how feedback was incorporated in policy development. Officials also need the capability to understand feedback to be able to incorporate (eg, may need to bring in technical expertise).
Clear	Consultation scope and objectives (including decisions already made) should be clear to stakeholders.
Co-ordinated	To the extent possible, processes should be co-ordinated across policy areas/sectors.

2 Preparing consultation material

This guidance for preparing discussion documents follows the same framework as the general RIA guidance in the previous section, but it is directed at eliciting good quality feedback from respondents through targeted questions in consultation material.

The quality of a discussion document will affect not just subsequent policy work and decision-making, but also the public's trust in officials to provide good policy advice based on reliable evidence. Consultation from a discussion document can and often will be the richest source of information and ideas available to officials in the course of policy development. They can start or challenge policy debates and, more importantly, they can provide officials with an opportunity to test analysis and to collect information to assess the likely impacts of alternative policy and regulatory options.

A discussion document should outline any (preliminary) conclusions from previous consultation exercises. If there has been substantial prior consultation (eg, workshops, international meetings etc.), then respondents should be advised and the outcomes summarised.

Using the RIA framework in structuring discussion documents should help to ensure that they provide a clear articulation of proposed regulatory changes to stakeholders, experts and the general public. Where there is potential for significant regulatory proposals, the Regulatory Impact Analysis Team (RIAT) must be provided with draft consultation material for comment before publication, but RIAT does not provide formal QA of discussion documents. This is the responsibility of agencies themselves.

The RIA requirements apply to discussion documents that include options that may lead to legislative or regulatory changes, and where Cabinet approval is sought for the release of the document. However, unless options are being narrowed down for consultation, there is no formal Cabinet requirement for independent quality assurance of discussion documents. Where explicit decisions are being sought in order to narrow down the options presented in a discussion document, then a RIS is required for those decisions.

As set out above, the RIS that accompanies final policy proposals will be assessed against the RIA quality assurance criteria. The quality of the consultation via a discussion document will therefore weigh heavily in this assessment.

2.1 How are RISs and discussion documents different?

A RIS is the department's document, but a discussion document need not be—discussion documents can be issued in the name of Ministers. Because a discussion document may be issued by a Minister, it does not require an Agency Disclosure Statement (ADS). It will, however, be necessary to discuss in the document 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—but a discussion document can be. A RIS should be officials' best advice on impacts, presented dispassionately and without prejudice. A discussion document, on the other hand, can (and sometimes ought to) be more provocative, more leading.

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. The major feedback from consultation, and the Agency's responses, should be summarised in the RIS that accompanies final Cabinet in-principle recommendations.

Depending on the intended audience, a discussion document can be more or less technical than a RIS. A RIS should be written for an informed, but non-expert decision-maker. By default, RIAT recommends that discussion documents be pitched at around the same level, unless the intended audience is:

- Broader, in which case respondents might need a more basic introduction to the policy question being discussed, or
- Narrower (say, a small population of experts), in which case respondents are likely to possess some degree of technical knowledge.

2.2 Questions that work

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

Ideally, questions appear immediately after any assertion or hypothesis that can be challenged or augmented, and officials' analytical frameworks may be summarised with a flow chart linking key questions and decision points to the different stages in the policy process. For longer documents, it might be useful to also include a consolidated list of question (eg, as an appendix), so that it is clear which parts of the document the individual questions relate to.

The rest of this section is structured to follow a general RIA framework, as found in a RIS. Each section concludes with some recommended questions.

2.3 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 and how they are likely to evolve without further regulatory change. In other words, document should outline a base case (or a 'do-nothing' scenario) that says, "Suppose we took none of the regulatory options considered here: what would happen?"

Examples of possible questions for the status quo section:

- Do you agree with this characterisation of the status quo? If not, please provide evidence to support your views.
- How would you describe the status quo? What other factors should be considered?

2.4 Problem definitions in discussion documents

The problem definition needs to do more than identify the gap: it should discuss its size and importance. If uncertain about the reality or size of the problem, Agencies should use questions to test thinking:

- 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?

2.5 Objectives

The objectives should be clear and should have the potential to be observable; stating what evidence would suggest a particular objective or desired outcome had been achieved. Following a clear statement of the relevant objectives, a discussion document should ask:

- Have we identified the correct objectives?
- What objectives should we use to assess and rank options?

2.6 Identifying options

A RIS and a discussion document that incorporates RIA should include a representative range of feasible options. There might be an infinite range of feasible options, but there is no need to include every single possible variation. Unless past decisions limit the set of options that can be consulted on, a discussion document should identify and describe at least:

- the status quo scenario projected forward—where no further regulatory changes occur (behaviour may still be expected to change over time)
- one or more non-regulatory options (eg, 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.

A consultation document that only requests feedback on a particular set of options without considering alternatives (sometimes referred to as a 'white paper') is unlikely to meet the RIA requirements—unless a good quality RIS is annexed to the paper for consultation.

Questions about the identification of options could include:

- Do you agree that these are the correct options to consider? If not, why not?
- What options should we consider to solve the problem (either as identified in this document, or as you identify the problem)?
- Please suggest options not discussed here. Of the options discussed, please say which options should not be considered. In both cases, please explain why.

2.7 Options analysis

The questions for 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 appreciate.

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 winners and losers), 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 good quality RIA should aim at assessing the likelihood of the impacts being revealed—including probabilities and the projected net-benefit values of best- and worst-case scenarios.

- Do you agree with the impact analysis of this option (or these options)? If not, why not? Please provide evidence to support your answer.
- What 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 likely best- and worst-case scenario?
- Who gains from this option and by how much? Who loses and by how much?
- What sources of information should we use to assess expected costs and benefits and to assess risks?

2.8 Implementation

Stakeholders who are more closely engaged with or 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 actually able to be implemented as envisaged by agencies. The plans for implementation should be clearly articulated so that stakeholders can have an indication of whether plans will be effective and whether the timeframes are achievable.

Questions might include:

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

2.9 Monitoring, evaluation and review

The plans for on-going monitoring, evaluation, and review should be presented to stakeholders early—even if they are likely to be administered in the same way as other operational policies by the Agency. Some of the information will come from stakeholders who are more closely engaged with or affected by the government agency that enforces or monitors the status quo. The plans for how stakeholders are expected to continue engaging with agencies should be clearly articulated so that stakeholders can have an indication of likely compliance costs.

Useful questions might include:

- Do you agree with the proposed monitoring arrangements? If not, please support your view.
- How should the proposal considered in this document be monitored?
- What should be monitored? To whom should results be reported?

3 Discussion documents must be clear

A RIS that meets the RIA requirements will be clear and concise—a discussion document may require more detailed information but it should still be clear and concise. The language and presentation of the discussion document should be informed by the prior knowledge of the parties being targeted for consultation. Discussion documents that are long and difficult to read will not aid effective consultation.

We recommend planning for internal or external independent reviewing of discussion documents. Independent reviewers can be highly effective where they are not subject experts, and may be able to identify ways to adjust a document to better seek a wide range of submissions.

Part 4: The RIS Process

This section describes the steps involved in putting together a Regulatory Impact Statement (RIS), from the template to the publication process—including obtaining independent quality assurance (QA) and providing the RIS to Cabinet.

1 Preparing a Regulatory Impact Statement (RIS)

The RIS is a government agency document, as distinct from a Cabinet paper which is a Minister's document. The RIS provides a summary of the agency's best advice to their Minister and to Cabinet on the problem definition, objectives, identification and analysis of the full range of practical options, and information on implementation arrangements. By contrast, the Cabinet paper presents the Minister's advice or recommendation to Cabinet.

The purpose of the RIS is to:

- provide the basis for consultation with stakeholders, and with other government agencies
- provide the basis for engagement with Ministers and therefore helping to inform and influence the policy discussion and Ministers' decisions
- inform Cabinet about the range of feasible options and the benefits, costs and risks of the preferred option(s), and
- enhance transparency and accountability for decision making through public disclosure once decisions are taken.

The RIS should provide an objective, balanced presentation of the analysis of impacts, with any conclusions reached by the agency explained and justified.

It should be prepared before the Cabinet paper, so that it informs the development of the preferred option and hence the Ministerial recommendations in the Cabinet paper. It should provide a reference point from which the Cabinet paper is developed, thus avoiding the need for a lengthy Cabinet paper and repetition between the two documents.

1.1 Required information

The RIS must contain the following information:

- agency disclosure statement (ADS)
- description of existing arrangements and the status quo
- problem definition
- objectives

- options and impact analysis – identification of the full range of feasible options, and analysis of the costs, benefits and risks of each option
- consultation
- conclusions and recommendations
- implementation plans, including risks, and
- arrangements for monitoring, evaluation and review.

A preferred option may be identified and discussed, but this is optional. Similarly, while the RIS needs to cover the policy problem being addressed, it is not required for the preferred option in the RIS to be reflected in the Cabinet paper (for instance if the Cabinet recommendation diverges from the Agency's advice). However, if possible the RIS should address the potential impacts of the recommendation in the Cabinet Paper alongside the alternative feasible options.

If the RIS does not cover options that form recommendations in the Cabinet Paper, the Agency Disclosure Statement should outline these options and explain why they do not form part of the RIA.

The required information, and a suggested template, is set out in more detail in [Annex 4.1](#).

1.2 Agency Disclosure statement

The agency is required to complete an agency disclosure statement (ADS) on the front of the RIS, which:

- discloses information to highlight any key gaps, assumptions, dependencies and significant constraints, caveats or uncertainties in the analysis, and
- is signed by the person with responsibility for the production of the RIS.

The disclosure statement should be completed before the RIS is submitted for quality assurance, and included with the RIS that is provided to the reviewer. This is different from the disclosure requirements described on page 3.

The ADS needs to identify gaps or constraints in the analysis and briefly identified the proxies used to fill these gaps, or the assumptions to overcome the constraints. This should give the reader an accurate sense of the level of analysis conducted in the RIS and give Cabinet (as the ultimate decision-maker) an appreciation of the level of reliance that can be placed on that analysis.

The ADS should not be an executive summary of the RIS and should not present detailed background—it should focus on constraints or the analysis and signal any major impacts that might pose risks. If timing or previous decisions have constrained analysis, the reasons or previous decisions and RISs should be clearly but briefly explained.

1.3 RISs for in-principle or intermediate policy decisions

As noted in *When so the RIA requirements apply?* (see [Part 1](#)), the RIA requirements apply when in-principle or intermediate policy decisions are taken by Cabinet. This is particularly important when options are narrowed down (eg, particular options are selected for further work, and/or options are removed from consideration). At these points, it may not be possible to prepare a comprehensive RIS. Instead, a draft or interim RIS may be prepared.

Draft or interim RISs may need to be updated for subsequent Cabinet decisions, to reflect the results of further analysis and any additional or new information that is available.

When a series of policy decisions is taken, it can be useful to refer to the RISs that were prepared for previous decisions. The nature of the earlier decisions should be explained, and URLs to the previous RISs provided. This background information can be presented in the status quo section, or as a separate introductory section.

1.4 Consultation and circulation

The draft RIS should be circulated for comment to relevant government agencies. Ideally, this should be done **before the Cabinet paper is prepared**. Otherwise it must be circulated with the draft Cabinet paper. It must also be included with draft Cabinet papers when they are submitted to Officials' Committees.

2 Obtaining Quality Assurance (QA)

Independent quality assurance must be undertaken on all RISs. The criteria for assessing quality are the same regardless of whether the RIS is assessed by the authoring agency or by RIAT.

2.1 Independent quality assurance

If the quality assurance is undertaken by the agency, it must be done by a person or group not directly involved in preparing the RIS and nominated by the agency's Chief Executive. A statement on the quality of the impact analysis will be provided in the Cabinet paper (see below).

The reviewer (whether RIAT or the agency) will distinguish between the RIS (and the analysis it summarises) and the actual regulatory proposal. The role of the reviewer is not to provide advice on the merit of the regulatory proposals, but on the quality of the RIS. The quality assurance should be undertaken before final advice is provided to the portfolio Minister.

2.2 Early warning

Ministers have expressed a strong preference for early warning where a significant RIS or discussion document is unlikely to meet the RIA requirements and where a RIS is required but will not be prepared.

Early warning is the primary responsibility of the agency responsible for preparing the RIS or discussion document, and needs to be given sufficient priority by agency officials. Further, for any significant RIS or discussion document that has not met, or in the view of the RIA team is unlikely to meet the RIA requirements, Treasury may advise the Minister of Finance and the Minister for Regulatory Reform, including whether these Ministers could usefully bring any issues to the attention of the portfolio Minister or other colleagues.

2.3 QA criteria

The QA criteria (see [Part 5](#)) should be used as a basis for the formal QA assessment. The first three criteria are the most important in terms of the substance of the analysis, and more weight should be placed on these aspects:

- **Complete**—Ensure that all the required information (see [Annex 4.1](#)) is provided in the RIS.
- **Convincing**—This criterion relates to the analytical framework that has been employed, and the level and type of analysis that has been undertaken. The *Undertaking RIA* (see [Part 2](#)) section of the Handbook should be used as a guide to assessment against this dimension of quality.
- **Consulted**—The *Effective Consultation* section (see [Part 3](#)) of the Handbook sets out the requirements for consultation. It is important that the RIS does not just state what consultation has been undertaken, but also explains the nature of any issues raised or views expressed by stakeholders, and how these have been taken into account in the development of the final proposal.

The final criterion—**clear** and **concise**—relates to the presentation of material in the RIS. Information should be succinct and in plain English, to enable decision-makers to easily understand the issues and trade-offs associated with the choices they are making. The RIS should also be sufficiently clear so the general public can understand the basis on which government decisions have been taken. It may be more helpful to present some information in tabular or diagrammatic form, and flexibility of presentation is permitted.

More guidance on applying the QA criteria can be found on in the section *Providing QA*. They should be used in conjunction with the overview of required information (see [Annex 4.1](#)) for the RIS and the guidance on impact analysis (see [Part 2](#)) provided in this handbook, including consultation (see [Part 3](#)) requirements.

2.4 Features of a robust quality assurance process

The process for achieving robust quality assurance is not prescribed, as agencies will need to tailor processes according to their own structures, policy processes and available resources. However, the following characteristics should be considered:

- The reviewer is nominated by the agency's Chief Executive and provides the opinion on quality of the impact analysis in the Cabinet paper. This person should therefore have sign-out authority and have suitable capability – including a thorough understanding of the RIA regime, and sufficient experience and expertise in policy analysis.

- The reviewer should be provided with early warning and have sufficient time to undertake quality assurance (ideally 5-10 working days).
- Time should be allowed for iteration with the reviewer, so that comments and queries can be addressed.

The reviewer should be provided with the RIS, including the completed disclosure statement. They may ask for material to test statements made in the RIS, eg, evidence that has been cited or referenced, assumptions and calculations underlying the cost benefit analysis, or the summary of stakeholder submissions. This material should be provided, so that the reviewer can be assured that the analysis is correct and robust.

When the agency is responsible for providing the quality assurance, it can be acquired in different ways:

- Some agencies have internal RIS review panels, comprising people from different policy teams.
- A permanent panel may not be possible in smaller agencies. Another option is to identify a pool of experienced people who can be drawn on, on an *ad hoc* basis. This pool could be comprised of people from other agencies (ie, not just internally sourced).
- For some large or complex pieces of work, or for small agencies where conflicts of interest are difficult to avoid, it may be appropriate to outsource independent quality assurance such as from a private sector consultant or subject matter expert (eg, academic). In these circumstances, it is important that the reviewer is familiar with the government's RIA requirements and the quality assurance criteria.

In addition to the formal quality assurance, a further test of whether the RIS is clear and well-communicated is to have someone completely uninvolved with the subject matter review the RIS. This can help ensure that the RIS be will easily understood by audiences with perhaps little or no prior history of the issues, including Ministers (hence assisting decision-making), and also the general public when it is published (thus meeting the transparency and accountability functions of the RIS).

2.5 Regulatory proposals that do not meet the RIA requirements

For any regulatory proposal that does not meet the RIA requirements, Treasury may advise the Minister of Finance and the Minister for Regulatory Reform. This includes regulatory proposals:

- for which a RIS was required but not prepared, or
- for which the RIA (as summarised in the RIS) is deficient.

For proposals that do not meet the criteria for RIAT involvement, this advice may be provided by the relevant Treasury policy team.

For proposals that only partially meet the RIA requirements, reasons should be given in the Cabinet paper to explain the key deficiencies and risks for Cabinet's decision.

2.6 Significant proposals that do not meet the RIA requirements

If a regulatory proposal meets the criteria for RIAT involvement, but does not meet the Government's RIA requirements and is ultimately agreed to by Cabinet, then it will be subject to a post-implementation review. The nature and timing of this review are to be:

- agreed by the lead agency in consultation with Treasury, and
- signed off by the responsible Minister, in consultation with the Minister of Finance and the Minister for Regulatory Reform.

2.7 Further guidance

More detailed advice on undertaking independent quality assurance is provided in [Part 5](#).

3 Preparing the Cabinet paper

While 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.

All Cabinet papers must include a section entitled **Regulatory Impact Analysis** to link the two documents. This section includes the following information.

- Statement explaining whether the RIA requirements apply to the proposal or any alternative options in the paper which Ministers may select, and if not, the specific exemption being claimed.
- Whether a RIS has been prepared and attached to the Cabinet paper, and if not, the reasons why.
- An independent government agency opinion on the quality of the analysis which states the following:

“[Name of team or position of person¹⁰ completing opinion – either from authoring agency or RIAT] has reviewed the Regulatory Impact Statement (RIS) prepared by [name of agency] and associated supporting material, and

[Statement on whether the reviewer considers that the information and analysis summarised in the RIS meets/does not meet/partially meets the quality assurance criteria

[Comment on any issues that have been identified in relation to any of the dimensions of quality specified in the quality assurance criteria].”

Ministers no longer need to certify in the Cabinet paper that proposals are consistent with the 2009 Government Statement on Regulation.

¹⁰ If the quality assurance has been provided by, eg, an internal RIS review panel, the name of this panel would be stated. Otherwise the position title of the reviewer should be stated (eg, Manager, [...] Team).

4 Publishing the RIS

The full text of all RISs must be published, in order to foster openness and transparency around the regulatory decision-making process.

RISs must be published on the lead Agency's **and** Treasury's websites, and the URLs to the location of the RIS must be included in the Explanatory Note to any Bill, Supplementary Order Paper (SOP), or regulations for which a RIS was prepared.

The [Parliamentary Counsel Office \(PCO\)](#) will provide standard wording for text to accompany the URLs. This wording may need to be adapted for different circumstances (eg, when multiple RISs for a series of policy decisions have been provided). Agencies must provide a specific, designated URL to PCO for each Bill, SOP, or regulations. Agencies must ensure that these are supplied in sufficient time to enable them to be included in the copies of the draft Bill, SOP, or regulations that are printed for submission to the Cabinet Legislation Committee (LEG).

4.1 Withholding sensitive or confidential information

Deletions can be made from published versions of RISs, consistent with the provisions of the [Official Information Act 1982](#).

4.2 Timing of publication

Publication is required at the time:

- any resulting Bill is introduced into the House or Supplementary Order Paper is released
- any resulting regulation is gazetted, or
- the government announces its decision not to regulate.

RISs may be published earlier at the discretion of the responsible Minister and/or Cabinet, for example with the press statement announcing any new policy for which a RIS is required.

4.3 Process for publication

When the RIS is due for publication (according to the requirements set out above), agencies must send the specific URL and a Word version of the RIS to Treasury at ria@treasury.govt.nz. The RIS on agency websites must comply with the New Zealand Government Web Standards and Recommendations, which are available at <https://webtoolkit.govt.nz/>.

Agencies must keep Treasury informed (via ria@treasury.govt.nz) about the timing of introduction/gazetted so that Treasury can publish the RIS as soon as possible after the Bill or regulations become publicly available.

Forty printed copies of the RIS must also be provided to the Bills Office. See <http://www.pco.parliament.govt.nz/ris-guidance/>.

Select committee clerks will include relevant RISs in the material provided to Select Committees on Bills referred to that Committee.

Annex 4.1

Regulatory Impact Statement: Overview of required information

This template sets out the elements that must be considered and addressed as part of Regulatory Impact Analysis, and summarised in the Regulatory Impact Statement. In some cases not all items will be relevant and in others more detailed analysis will be required.

Flexibility is permitted in the presentation of this information - for instance, some information may be usefully presented in tables or diagrams. There is no formal page limit; but the RIS should try to concisely summarise the analysis undertaken. Unless very short, RISs should include an executive summary (for example with a summary table of the options analysis). Paragraph and page numbers should be included.

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).

Part 5: Providing Quality Assurance (QA)

This section contains advice on providing independent quality assurance (QA) of Regulatory Impact Statements (RISs). It is aimed at people who are asked to provide feedback on the quality of a RIS, and those providing the independent QA. This guidance should be read in conjunction with the rest of *the Handbook*.

1 The purpose of quality assurance

The purpose of independent QA of RISs is to provide assurance to Cabinet that it is making decisions on the basis of the best possible advice. It does this by requiring that an appropriate person (someone who is not responsible for producing the RIS) has considered whether the analysis and information summarised in the RIS is of a sufficient standard to properly inform the decisions being taken. The reviewer's assessment is summarised in a formal statement that is included in the Cabinet paper accompanying the RIS.

Cabinet requires that independent quality assurance (QA) is undertaken on all Regulatory Impact Statements (RISs).¹¹ If any of the options considered in the RIS are likely to have a significant impact or risk (see [Part 1](#)), then this formal QA will be undertaken by the Regulatory Impact Analysis Team (RIAT) in Treasury. For all other RISs, the QA will be provided by the authoring agency.

1.1 The QA criteria

The QA criteria (see [Annex 5.2](#)) should be used as a basis for the formal QA assessment. The first three criteria are the most important in terms of the substance of the analysis, and more weight should be placed on these aspects:

- **Complete**—Ensure that all the required information (see [Annex 5.1](#)) is provided in the RIS.
- **Convincing**—This criterion relates to the analytical framework that has been employed, and the level and type of analysis that has been undertaken. The *Undertaking RIA* section ([Part 2](#)) of the Handbook should be used as a guide to assessment against this dimension of quality.
- **Consulted**—The *Effective Consultation* section (see [Part 3](#)) of the Handbook sets out the requirements for consultation. It is important that the RIS does not just state what consultation has been undertaken, but also explains the nature of any issues raised or

¹¹ Refer CAB Min (09) 27/11, CAB Min (09) 38/7A.

views expressed by stakeholders, and how these have been taken into account in the development of the final proposal.

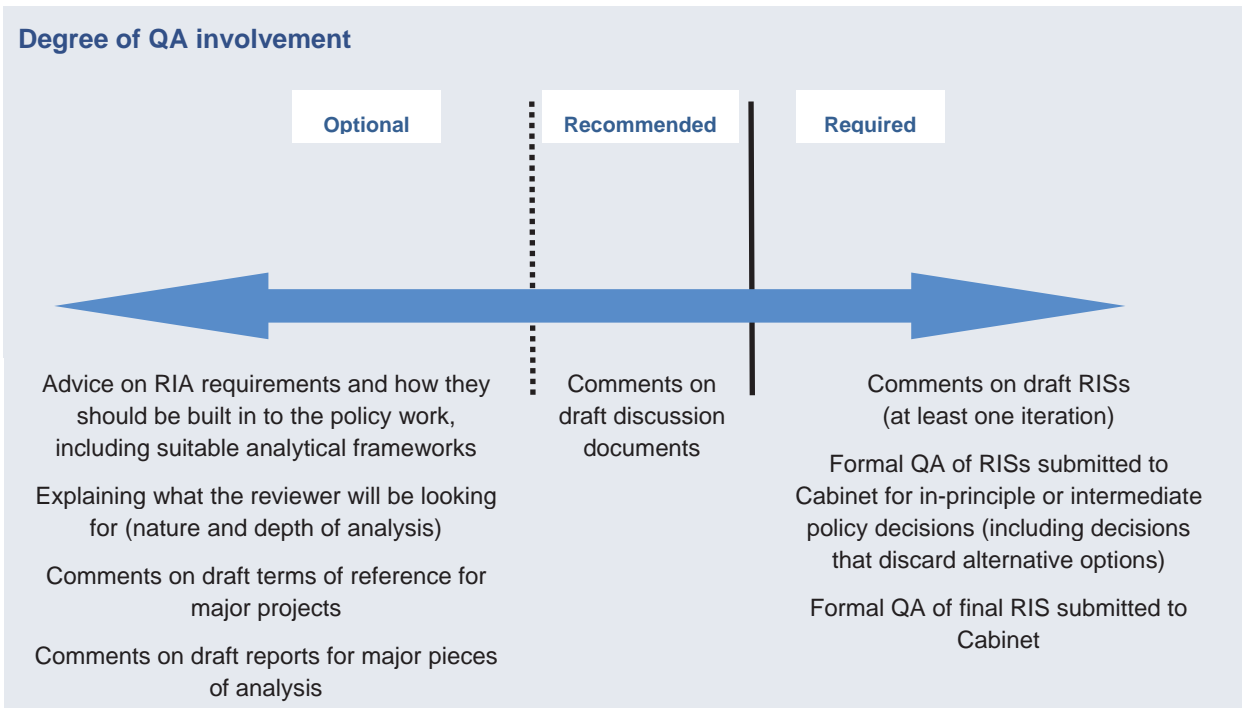
- **Clear and Concise** – The final criterion relates to the presentation of material in the RIS. Information should be succinct and in plain English, to enable decision-makers to easily understand the issues and trade-offs associated with the choices they are making. The RIS should also be sufficiently clear so the general public can understand the basis on which government decisions have been taken. It may be more helpful to present some information in tabular or diagrammatic form, and flexibility of presentation is permitted.

More guidance on applying the QA criteria can be found below.

2 The role of the reviewer

There are two aspects to the reviewer’s role: assessing and assisting. Formal assessment of the final RIS is a mandatory requirement and represents the reviewer’s core role. However, the reviewer can also provide assistance to the writer of the RIS, to help lift the quality of the final product. There are choices around the degree to which the reviewer gets involved in the earlier stages of the policy development process, illustrated in the box below.

These requirements apply to RISs that do not require assessment by RIAT. Agency reviewers may choose to review significant RISs prior to assessment by RIAT, and there are some benefits with this: it can identify and address issues with the RIS before it is provide to RIAT, and it may assist in agency capability building. However, it could also increase the time taken to obtain QA. This additional QA is therefore entirely optional.



2.1 Formal assessment (required)

The core role involves assessing the final RIS. Based on our experience, we strongly recommend that at least one iteration of the RIS is allowed for, meaning that the reviewer would provide comments on at least one draft of the RIS.

This applies to the RIS for final policy decisions, as well as RISs that are to be submitted to Cabinet to support any in principle or intermediate policy decisions. However the QA for interim RISs will need to be tailored to the circumstances, taking into account the stage of policy development, the nature of the decision being sought, and the level of analysis possible. At early stages of the policy process, it may not be feasible to prepare a comprehensive RIS, so the quality assurance will need to reflect these constraints.

Both the reviewers and the people responsible for the preparation of the RIS should be clear that the reviewer is concerned solely with the quality of the underlying analysis and its presentation in the RIS. The reviewer's role **is not to assess the merits of any policy options** considered in the RIS. That is, the reviewer does not have a view on whether the proposal is a good idea. However, they are concerned with the logic and argumentation presented in the RIS (the “convincing” criterion). In practice it can sometimes be hard to draw a firm distinction between the quality of the RIA/RIS and the quality of the proposal. But essentially the reviewer needs to determine whether Ministers have enough information, of sufficient quality, to make an informed decision.

2.2 Discussion documents (recommended)

The RIA requirements apply to discussion documents that contain options that may lead to legislative or regulatory change. There is no formal assessment requirement for discussion documents, and reviewers are therefore not mandated to provide a QA statement comment in the Cabinet paper.

However, it is desirable that quality assurance is provided on draft discussion documents, to help ensure that they will meet the RIA consultation requirements, and provide the basis for a good quality RIS at the end of the policy process. QA of consultation material reduces the likelihood of a proposal failing to meet the RIA requirements at the RIS stage.

The focus of comments should therefore be on whether the document is adequately structured around the RIA framework, and whether there are suitable questions for stakeholders. In providing comments on draft documents, reviewers should refer to the guidance on Effective Consultation.

2.3 Other assistance (optional)

Additional engagement earlier in the policy process can assist in lifting the quality of the analysis, and thereby the final RIS and ultimately the regulatory proposal itself. This assistance role can involve engaging at key points in the process such as:

- providing advice at the outset of the policy development process on:
 - the RIA requirements and how they should be built into the policy work, including suitable analytical frameworks and tools, and

- what the reviewer will be looking for in terms of the nature and depth of analysis and the extent of evidence on the problem, impacts and risks
- commenting on draft terms of reference for the commissioning of major pieces of analysis (such as cost-benefit analysis), to assist in establishing a suitable analytical framework, and
- commenting on draft reports on major pieces of analysis.

Preliminary Impact and Risk Assessments (PIRAs) provide a trigger for early engagement.¹² Reviewers may find it useful to commence their engagement at the PIRA stage, to provide early assistance in shaping the quality of the analysis. The reviewer is not required to provide advice on whether the RIA requirements apply or on how to complete a PIRA, though they may choose to provide this role.

The reviewer should take care to ensure that they preserve the independence of their final QA opinion, by focusing on the nature and quality of the analysis rather than the features of the proposal.

2.4 Providing comments and advice

The purpose of commenting on draft material such as discussion documents is to help enable the final RIS to meet the RIA requirements. The reviewer's comments should therefore relate to the substance of the analytical methods employed and the analytical process (including consultation), looking to the nature and level of information that will need to be presented in the final RIS.

Areas of focus may include:

- the extent of evidence on the nature and size of the problem, and of likely impacts
- the analytical framework and techniques including whether an established methodology (such as market analysis or cost-benefit analysis) will be employed
- identification and assessment of costs, benefits and risks, and
- the nature and quality of the consultation process.

It is usually helpful if early comments (eg, on draft RISs) are as comprehensive as possible, to avoid raising substantive issues late in the process. When reviewing draft RISs, it can be useful for the reviewer to provide an indication as to the likely final assessment, highlighting any areas that require further work (and what the specific gaps are) so that effort can be focused on these main areas.

¹² A PIRA must be completed at the outset of the policy development process in order to determine whether the RIA requirements apply and whether RIAT will need to be involved. PIRAs must be submitted to the Treasury vote/policy team for confirmation (refer to the PIRA section of the *RIA Handbook* for details).

2.6 Providing final QA

Material required

The reviewer should be provided with the RIS, including the completed disclosure statement. They may ask for material to test statements made in the RIS, eg, evidence that has been cited or referenced, assumptions and calculations underlying the cost benefit analysis, or the summary of stakeholder submissions. This material should be provided, so that the reviewer can be assured that the analysis is correct and robust.

Applying the QA criteria

The criteria for assessing the RIS are the same regardless of whether the QA is provided by RIAT or the agency. All four dimensions must be assessed by the people providing independent quality assurance of Regulatory Impact Statements. The associated questions, however, are indicative and do not purport to be exhaustive.

In reviewing a RIS, the QA criteria should be applied to each element of the RIA framework. The matrix on the following page outlines some of the questions that should be asked by a reviewer of each section of the RIS. A potential format for providing feedback is given in Annex 5.1. Example QA Template.

Considering the disclosure statement

The purpose of the agency disclosure statement is to provide agency accountability for the quality of their policy advice and to allow the person responsible for preparing the RIS to explain any constraints they faced in undertaking this analysis (eg, key gaps, assumptions, dependencies, caveats or uncertainties).

The reviewer should take the information in the disclosure statement into account when forming a QA opinion. The main issue this raises is to what extent any constraints identified should be considered a mitigating factor with respect to the quality of the analysis. Judgement will be required on a case-by-case basis, but in general, reviewers should consider whether the constraint is a genuine analytical constraint, whether it was reasonably possible to overcome it and whether the significance of the constraint is such that it impairs the ability of Cabinet to fully rely on the analysis in the RIS for its decision making.

For instance, a genuine analytical constraint may exist when there are no existing data eg, on the scale of the policy problem (and it is simply not possible to obtain or gather such data). There are two possible ways in which this situation can be handled:

- the RIS would note the uncertainty and risks this raises, and the QA opinion could be **subject to** the constraint, or
- the QA opinion might determine that the RIS does not meet the “convincing” criterion, but note that these deficiencies have been identified.

There is a “line” between these two forms of QA statement and it is a matter of judgement on a case-by-case basis to discern where the line is.

Another example is when the portfolio Minister has directed that analysis be undertaken only on particular policy options (and other feasible options are taken off the table prior to the preparation of the RIA/RIS). In this case, the reviewer may state whether the analysis is as good as could be expected in light of these constraints, but nonetheless only partially meets the quality assurance criteria. In such a situation, the agency's disclosure statement should also identify the alternative options that they would have analysed, had they been able to consider the full set of feasible options.

Preparing a QA statement

The reviewer (whether RIAT or the agency) must provide a formal opinion on the quality of the analysis for inclusion in the Regulatory Impact Analysis section of the Cabinet paper. The QA statement needs to:

- state whether the reviewer considers that the information and analysis summarised in the RIS meets/does not meet/partially meets the quality assurance criteria, and
- comment on any issues that have been identified in relation to any of the dimensions of quality set out in the QA guidance.

The purpose of this statement is to provide decision-makers with advice on the quality of the information in the RIS and the reliance they should place on the underlying analysis. It is **not** a comment on the efforts of the authoring agency.

In practice, judgement is required in deciding which category a RIS falls into (particularly when choosing between “meets” and “partially meets”; and between “partially meets” and “does not meet”). The reviewer needs to consider the context of the decisions being taken (eg, whether they are in principle or final policy decisions) and any constraints that have been identified in the Agency Disclosure Statement that may compromise the quality of the analysis.

In general, we recommend that “does not meet” is used when RIS falls short of the standards on more than one aspect (eg, several components of the required information are absent or of inadequate quality). “Partially meets” may be appropriate when the RIS meets the quality standards on most dimensions, but there is one particular area of deficiency that should be highlighted.

The QA statement must use the term “meets”, “partially meets” or “does not meet” the RIA requirements, because Cabinet Office will reflect this in the top sheet they prepare for the Cabinet paper.

There is no set format for the information in the second bullet point, as this will depend on the particular circumstances of the individual RIS. However, the statement should:

- be succinct
- provide an indication as to the reliance that can be placed on the RIS, as a basis for informed decision-making
- relate the issues raised to the relevant QA criterion, and
- explain any gaps between the analysis in the RIS and what they would have expected to see, and the implications or risks this poses. That is, what further analysis could or should have been undertaken, and/or what risk mitigation can be done (eg, additional, targeted consultation).

Template statement

Some illustrative examples are provided in Annex 5.3. Illustrative QA statements. A template is also provided in the box below.

Overall opinion on quality of analysis

The overall opinion is to be included in the Cabinet paper under the heading *Regulatory Impact Analysis*

[Name of team or position of person completing opinion—either from authoring agency or RIAT] has reviewed the Regulatory Impact Statement (RIS) prepared by [name of agency] and associated supporting material, and

[Statement on whether the reviewer considers that the information and analysis summarised in the RIS meets/does not meet/partially meets the quality assurance criteria]

[Comment on any issues that have been identified in relation to any of the dimensions of quality specified in the quality assurance guidance.]”

Note: Comments should be included where a RIS has been assessed as not meeting, or only partially meeting, the RIA requirements.

Non-standard situations

Policy processes are often non-linear, and a wide variety of non-standard situations can arise. Reviewers may come under pressure to provide QA statements in a very short space of time, on non-final RISs, or on RISs that change rapidly (eg, as policy options are altered by Ministers). Sometimes regulatory proposals will “by-pass” the RIA requirements altogether (by not having a RIS or by not being submitted to the appropriate QA process).

This guidance document does not attempt to cover all possible circumstances, and agencies will need to exercise judgement in many cases. RIAT is available to provide advice on a case-by-case basis, and share their experiences at dealing with similar situations.

3 Moderation and review

It is important that the QA criteria are applied consistently across proposals and over time.

3.1 Moderation arrangements

There is a variety of moderation arrangements that can be put in place, such as:

- having centralised oversight of all QA assessments (eg, the chair of the review panel)
- ensuring all QA is subject to peer review by others within the panel or pool of reviewers, or
- rotating QA responsibilities for types of proposals (ie, particular policy areas) so that they are not always reviewed by the same person.

3.2 Evaluation and review

Periodic evaluations of QA assessments can provide a further check. One way of obtaining this is by having an independent party (such as a consultant) review a random sample of QA assessments.¹³ To assist this process, agencies should maintain a register of RISs assessed and the outcomes of these assessments. Where a RIA panel has been established, this could be undertaken by the secretariat or a nominated panel member.

Keeping track of regulatory proposals in this way will also assist agencies in providing information requested by Treasury for their report backs to Cabinet on the operation of the regulatory management system and how the Government is meeting its regulatory commitments and any other reporting Treasury may undertake.

4 Establishing a QA process

4.1 Options for obtaining QA

The process for obtaining QA is not prescribed, as agencies will need to tailor processes according to their own structures, policy processes and available resources. Some options are set out in the table below—a mix of options may be appropriate for different proposals or policy projects.

	RIA panel	Pool of reviewers	External reviewer
Distinguishing features	Permanent or rotating Can contribute to RIA awareness raising/agency capability building and expertise	Identified pool of experienced people/experts from which a panel can be drawn on a proposal-by-proposal basis May be used on an <i>ad hoc</i> basis Could comprise internal and external people (eg, from other agencies) Can contribute to RIA awareness raising/agency capability building and expertise	Eg, people from other agencies, private sector consultants, academics, subject matter experts May be suitable for large or complex pieces of work, or where conflicts of interest are difficult to avoid Less likely to contribute to agency capability building
Particular considerations	Concentrated resource commitment Process for identifying potential conflicts of interest May want chair and secretariat	Timeframes for arranging reviewers and determining process – some pre-agreement may be useful Consistency of review opinion, across proposals and over time Process for identifying potential conflicts of interest	Cost Reviewer needs to be familiar with the RIA requirements and the QA criteria Timeframes for organising review arrangements (incl. contracts) Contractual arrangements, eg, how to take account of unforeseen changes in the policy process, allowing for iterations

¹³ The inter-agency Regulatory Impact Analysis Reference Group (RIARG) has previously commissioned two such reviews, and may commission further reviews in the future. The most recent is available on Treasury's website at <http://www.treasury.govt.nz/publications/guidance/regulatory/riareview>.

4.2 Selecting appropriate people

The Cabinet requirements state that if QA is provided by the agency it must be done by a person or group not directly involved with the preparation of the RIS and nominated by the agency's Chief Executive. This means that:

- The reviewer/s should have suitable **capability** – including a thorough understanding of the RIA regime, and sufficient experience and expertise in policy analysis.
- Internal reviewers should be sufficiently senior as to have sign-out authority on behalf of the agency.
- A certain level of **independence** is required.¹⁴

4.3 Implementing the process

- The QA process should be integrated into an agency's policy development and Cabinet paper submission process. Agencies may elect to review significant RISs before they are submitted to RIAT, but this is optional.
- The PIRA process provides an initial "hook" for engagement. Agencies may see benefit in tracking policy proposals from this initial stage, and internal RIA panels/reviewers may wish to be copied in to PIRA correspondence.
- Regulatory plans provide an additional platform for engagement, and can be used as a basis for communication with those staff likely to be involved in the development of regulatory proposals (ie, identifying relevant staff and raising awareness of the RIA requirements).
- The reviewer should be provided with **early warning** and have **sufficient time** to undertake quality assurance (ideally 5-10 working days).
- Time should be allowed for iteration with the reviewer, so that comments and queries can be addressed.
- The reviewer should be provided with the completed **disclosure statement**, so that any issues raised in this statement can be factored in to their assessment.
- There should be an agreed process for when the reviewer's final assessment is that the RIS partially meets or does not meet the QA criteria. This process may include arrangements for briefing senior management and Ministers' offices.
- If using a pool or panel of reviewers, the terms of reference for the group should cover how a joint view, and hence final decisions, will be reached and deadlock avoided (eg, electing a chair with final decision rights).

The reviewer's opinion should be considered independent and final. There may be instances when the policy team responsible for preparing the RIS is unhappy with the final assessment and/or the wording of the QA statement. In anticipation of such scenarios, agencies may wish to consider the process by which these situations will be managed (ie, identifying the responsible senior management and how they will provide support to the reviewer).

¹⁴ The person providing the QA should not be a member of the same team that has prepared the RIS. In smaller agencies where this is not possible, the QA may need to be outsourced in order to ensure independence (see Table 1 for options).

5 Critical success factors

Senior management buy-in and support is essential to the credibility and effectiveness of a robust QA process.

A **high-level of awareness** throughout the agency about the RIA requirements and the QA process is important in ensuring that all RISs obtain the required QA.

Widespread understanding of the reviewer's role and the QA process is also needed. It is recommended that procedures and protocols around the operation of the QA process are **documented and communicated** across the agency.

Having the **RIA framework embedded early** as part of the generic policy development process will help lift the quality of analysis more generally and enable the RIA requirements to be met.

Annex 5.1 QA questions and expectations

QA Criteria	Agency Disclosure Statement	Status Quo & Problem	Objectives	Options Analysis	Implementation & Monitoring
Complete	<p>Does the ADS indicate how much confidence decision-makers should have in the RIS?</p> <ul style="list-style-type: none"> Does the ADS briefly describe the nature and extent of the analysis undertaken, noting any limitations? Are all risks covered? Does the ADS identify any serious impacts of the preferred options? Have all serious impacts identified in the ADS been analysed in the RIS? 	<p>Is a problem identified and explained?</p> <ul style="list-style-type: none"> Describe the key features of the current situation (including any existing legislation, regulations, and relevant features of the market). Explain relevant decisions that have already been made. Identify the problem, and describe the costs and benefits under the status quo (ie, the outcomes expected without intervention). 	<p>Do the objectives describe the desired outcome?</p> <ul style="list-style-type: none"> Identify relevant policy objectives in addition to the purpose of the RIS. State whether any constraints exists, such as time or budget 	<p>Are all possible options identified and described?</p> <ul style="list-style-type: none"> Identify the full range of practical options (regulatory and non-regulatory) that may wholly or partly achieve the objectives. Within any regulatory options, identify the full (viable) range of regulatory responses, including the range of settings that could be adopted 	<p>Is an implementation path identified and explained?</p> <ul style="list-style-type: none"> Summarise how the preferred option(s) will be given effect, including timing, communication, transitional arrangements, and any enforcement strategies. Outline plans for monitoring and evaluating the preferred option, including performance indicators and how the necessary data will be collected
Convincing	<ul style="list-style-type: none"> Do any of the limitations noted in the ADS impact on the analysis in the RIS? - Noting limitations to the RIA in the ADS does not automatically alter the standard for QA. Is the structure of the ADS clear? Are the issues prioritised? 	<p>Does the problem need to be addressed?</p> <ul style="list-style-type: none"> Describe the scope of the problem and its impacts. Identify the root cause of the problem (not just the symptoms). Demonstrate the scale of the problem using empirical or anecdotal evidence. 	<p>Will the objectives identify the best option?</p> <ul style="list-style-type: none"> Identify any potential trade-offs between the objectives. Explain the Government's desired outcomes in the context of the problem, while ensuring specificity does not unduly limit the range of options. 	<p>Has the best option been selected?</p> <ul style="list-style-type: none"> Evaluate the options against the objectives, ensuring the analysis is commensurate with the size and complexity of the problem, the magnitude of the impacts, and risks. Identify costs and benefits under preferred option(s) for stakeholders. Compare options against consistent criteria. 	<p>Is the implementation path realistic?</p> <ul style="list-style-type: none"> Identify any implementation risks, and describe how these risks will be mitigated. Describe how the proposal would interact with, or impact on, existing regulation—including scope to reduce or remove any existing regulations. Explain how the monitoring and evaluation process will identify if any additional changes are needed.
Clear & Concise		<p>Is the problem clearly described?</p> <ul style="list-style-type: none"> Explain the problem in the context of the status quo. Use tables and subheadings where appropriate. 	<p>Is it clear how the objectives will be applied?</p> <ul style="list-style-type: none"> Clearly identify hierarchy and any relationships between the objectives. 	<p>Is the analysis of options presented consistently?</p> <ul style="list-style-type: none"> Summarise and present the outcome of the options analysis in a consistent format. 	<p>Are the implications clear for affected parties?</p> <ul style="list-style-type: none"> The information is presented in a clear way for affected parties to understand any resulting implications.
Consulted	<ul style="list-style-type: none"> Explain who has been consulted and what form the consultation has taken. If there was limited or no consultation undertaken, state the reasons why. 	Summarise key feedback received, with emphasis on any significant concerns raised about the preferred option, and how the proposal has been altered to address these concerns			

Annex 5.2 Example QA Template

The following template may be a useful format for providing high-level QA comments. More detailed assistance is likely to require an evaluation of the ‘four Cs’ QA criteria for each element of the RIA framework.

Dimensions

Complete

- Is all the required information (see [Annex 5.1](#)) (including the disclosure statement) included in the RIS?
- Are all substantive elements of each fully-developed option included (or does the RIS identify the nature of the additional policy work required)?
- Have all substantive economic, social and environmental impacts been identified (and quantified where feasible)?

Reviewer's opinion:

Convincing

- Are the status quo, problem definition and any cited evidence presented in an accurate and balanced way?
- Do the objectives relate logically to, and fully cover, the problem definition?
- Do the options offer a proportionate, well-targeted response to the problem?
- Is the level and type of analysis provided commensurate with the size and complexity of the problem and the magnitude of the impacts and risks of the policy options? (See [Part 2](#).)
- Is the nature and robustness of the cited evidence commensurate with the size and complexity of the problem and the magnitude of the impacts and risks of the policy options? (See [Part 2](#).)
- Do the conclusions relate logically and consistently to the analysis of the options?

Reviewer's opinion:

Consulted

- Does the RIS show evidence of efficient and effective consultation (see [Part 3](#)) with all relevant stakeholders, key affected parties, government agencies and relevant experts?
- Does the RIS show how any issues raised in consultation have been addressed or dealt with?

Reviewer's opinion:

Dimensions

Clear and concise

- Is the material communicated in plain English, with minimal use of jargon and any technical terms explained?
- Is the material structured in a way that is helpful to the reader?
- Is the material concisely presented, with minimal duplication, appropriate use of tables and diagrams, and references to more detailed source material, to help manage the length?

Reviewer's opinion:

Annex 5.3 Illustrative QA statements

This section provides some examples of the sort of text that illustrate to Cabinet the independent assessment of RIA quality. Cabinet papers may relate to seeking in-principle or final policy decisions, or decisions to narrow down options for consultation. Formal independent QA of the RIS (and underlying RIA) is required for these papers.

Papers may alternatively seek agreement to release consultation material before options have been narrowed—although a preferred option may be emerging through the agency's analysis. While formal QA is not required for these consultation-stage Cabinet papers, independent review (either from within or external to the agency) is encouraged. A statement by the agency about the independent reviewer's opinion about the quality of the RIA is therefore encouraged, but not expressly required.

Discussion Document—Possible RIA statements for Cabinet papers

The RIA requirements apply to discussion documents that contain options that may lead to legislative or regulatory change. While there is no mandated QA requirement for discussion documents (and so there is no formal requirement for a QA statement in the associated Cabinet paper), it is desirable that QA is provided on draft discussion documents.

QA, and a comment about the quality of the RIA contained in a consultation material, increases the likelihood that a policy project will meet the RIA consultation requirements at the RIS stage. It provides the basis for a good quality RIS at the end of the policy process.

Discussion document appropriately contains the elements of a RIA

The Regulatory Impact Analysis (RIA) requirements apply to this policy work.

While there is no formal requirement to carry out an independent assessment of discussion documents, the [name of Agency]'s RIA Panel has nonetheless provided independent quality assurance on the discussion document and considers that it appropriately incorporates the RIA elements.

A Regulatory Impact Statement will be prepared when Cabinet is invited to make final decisions in relation to these [options/proposals].

Discussion document does not appropriately contain the elements of a RIA (option A)

The Regulatory Impact Analysis (RIA) requirements apply to this policy work.

While there is no formal requirement to carry out an independent assessment of discussion documents, the [name of Agency]'s RIA Panel has nonetheless provided independent quality assurance on the discussion document and considers that it does not appropriately incorporate the RIA elements.

This is because [eg, not clear what the problem is, policy objectives are unclear, alternative options not presented, not clear how the proposed options will address the problem, etc].

This could be mitigated through [additional meetings with stakeholders, further research, etc].

*A Regulatory Impact Statement (RIS) will be prepared when Cabinet is invited to make final decisions in relation to these **[options/proposals]**. However, there is a risk that the RIS might not fully meet the RIA requirements because one of the assessment criteria is the quality of consultation.*

Discussion document does not appropriately contain the elements of a RIA (option B)

There may be cases where an independent party (such as an agency QA panel) was unable to review the final version of the discussion document. This may occur because a Minister was still making changes or because the document was not provided for an independent review.

The Regulatory Impact Analysis (RIA) requirements apply to this policy work.

There is no formal requirement to carry out an independent assessment of discussion documents.

*A Regulatory Impact Statement will be prepared when Cabinet is invited to make final decisions in relation to these **[options/proposals]**.*

Decision-stage RISs—Example RIA statements for Cabinet papers

Formal assessment of the final RIS is a mandatory requirement and represents the reviewer's core role. This applies to the RIS for final policy decisions, as well as RISs that are to be submitted to Cabinet to support any in principle or intermediate policy decisions.

QA statements for interim RISs will need to be tailored to the circumstances, taking into account the stage of policy development, the nature of the decision being sought, and the level of analysis possible. At early stages of the policy process, it may not be feasible to prepare a comprehensive RIS, so the quality assurance will need to reflect these constraints.

Partially meets

*The Manager, **[name of Team]** in the **[name of Agency]** has reviewed the RIS prepared by the **[name of Agency]** and associated supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.*

In light of the constraints on the policy development process that are identified in the Agency Disclosure Statement, the reviewer considers that the information in the RIS is as complete as could be expected and identifies the main risks and uncertainties.

However the RIS does not provide evidence of the stated problem or convincing argumentation for the preferred option, so the need for the proposed regulation is not clear.

*The **[name of Agency]**'s independent RIS review panel has reviewed the RIS prepared jointly by the **[name of Agency]** and the **[name of contributing Agency]**, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria. While the analysis is largely complete, the RIA consultation requirements have not been met as there has not been public consultation on the specific proposals set out in the RIS.*

*The Chief Advisor, **[name of Team]** in the **[name of Agency]** has reviewed the RIS prepared by the Ministry of Innovation and associated supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria. The information in the RIS is as complete as could be expected given the timeframes for policy development. However, while the risks of the preferred option have been identified, ideally analysis on the nature of these risks (including how they would manifest) and how they can be addressed or managed, would be undertaken before decisions are taken.*

Does not meet

The **[name of Agency]**'s RIA review panel has reviewed the RIS prepared by the **[name of Agency]** and considers that the information and analysis summarised in the RIS does not meet the quality assurance criteria, for the following reasons:

- the RIS does not identify or assess of the full range of feasible options, including non-regulatory options
- the options identified in the RIS are not assessed against the stated objectives, and
- there has been no consultation with affected stakeholders.

The Manager, **[name of Team]** has reviewed the RIS prepared by the **[name of Agency]** and considers that the information and analysis summarised in the RIS does not meet the quality assurance criteria, for the following reasons:

- the RIS provides no evidence of the stated problem, and
- the RIS provides no information on how the proposals will be implemented, including how detailed regulatory design choices may influence the overall effectiveness of the changes.