

Taking chances with risk

Objective and scope

Policy advising is an inherently risky business. Identifying and mitigating risks is therefore a crucial element of any policy paper.

This note offers some ideas about the types of risks you need to consider and how they can be reported.

If there is a chance that things may not turn out as expected, then you have risk

In its simplest form, risk in the development of policy advice is concerned with the likelihood that things don't turn out as expected. There are a number of key concepts that are relevant here:

- **Probability or likelihood** – what is the probability that something different from expected occurs?
- **Scale or impact** – if something different happens, what are the implications? How substantial is the risk? Can the potential impacts be quantified?¹
- **Mitigation strategies** – what can be done to manage the risk? Do the mitigation strategies manage the probability of something occurring or the impact of it occurring? And what is the residual risk once the management strategies have been applied?

But remember, as Samuel Johnson said:

“Nothing will ever be attempted, if all possible objections must be first overcome” (Rasselas, 1759).

The trick here is identifying the risks, and how they can be managed, and balanced with the outcomes you hope to achieve, not eliminating them altogether.

Consider both sides

Risk can be positive or negative. In general policy practice, risk tends to refer to the negative. But do remember that things can work out better than expected. You need to explicitly cover off the risk of this happy eventuality as well.

There can be a tendency to optimism bias – few analysts want to be too conservative, especially when bidding for funding. Treasury has built accounting for this into their Better Business Case guidance, so is clearly expecting that analysts might be overly positive about the expected outcomes. You can counter this bias by good risk assessment.

Identifying risk is a critical part of providing quality policy advice

Our framework for assessing the quality of policy advice has an explicit risk and mitigation consideration.

This requirement stems from the long standing tradition of 'free and frank' advice. It is enshrined in the State Sector Act 1988 (s32) as a key responsibility of Chief Executives in the public sector, and may be considered to be “passed on” to those staff and managers providing the policy advice to Ministers.

In fact, the Cabinet Office manual states that “During the policy development process, the advice given by officials should be free and frank, so that Ministers can take decisions based on all the facts and appreciation of all the options” (Principles of Public Service 3.52; Cabinet Manual, 2008).

This means stepping up to the plate

Treasury, in describing the practical application of the principle of free and frank advice, says that “we have a duty to alert Ministers to possible consequences of following particular policies, whether or not such advice accords with Ministers' views” (Treasury, 2008).

This is rarely a fun thing for officials to do, especially when the Minister has a pet project to promote, but there are ways and means of delivering hard news, and the best shops find a way through. The consequences of not doing so can be very painful for both the Minister and advisor.

Many Ministers also adopt a 'no surprises' approach. While broader than just risk, and focused on stakeholder and media issues, it also applies to providing advice on actual and potential risks of various policy options.

¹ The product of the probability and the potential impact is the expected value' of that occurrence. This can be useful as a concept in any cost-benefit analysis considerations.

The Treasury material on developing regulatory impact statements (Treasury, 2013) contains guidance on undertaking a Preliminary Impact and Risk Assessment (PIRA). This is designed to assess whether a regulatory impact statement (RIS) is required. The PIRA Guidance includes a useful list of risks which can be used as a starting point for risk identification and analysis for any policy proposal.

Do the analysis; reflect the results in the paper

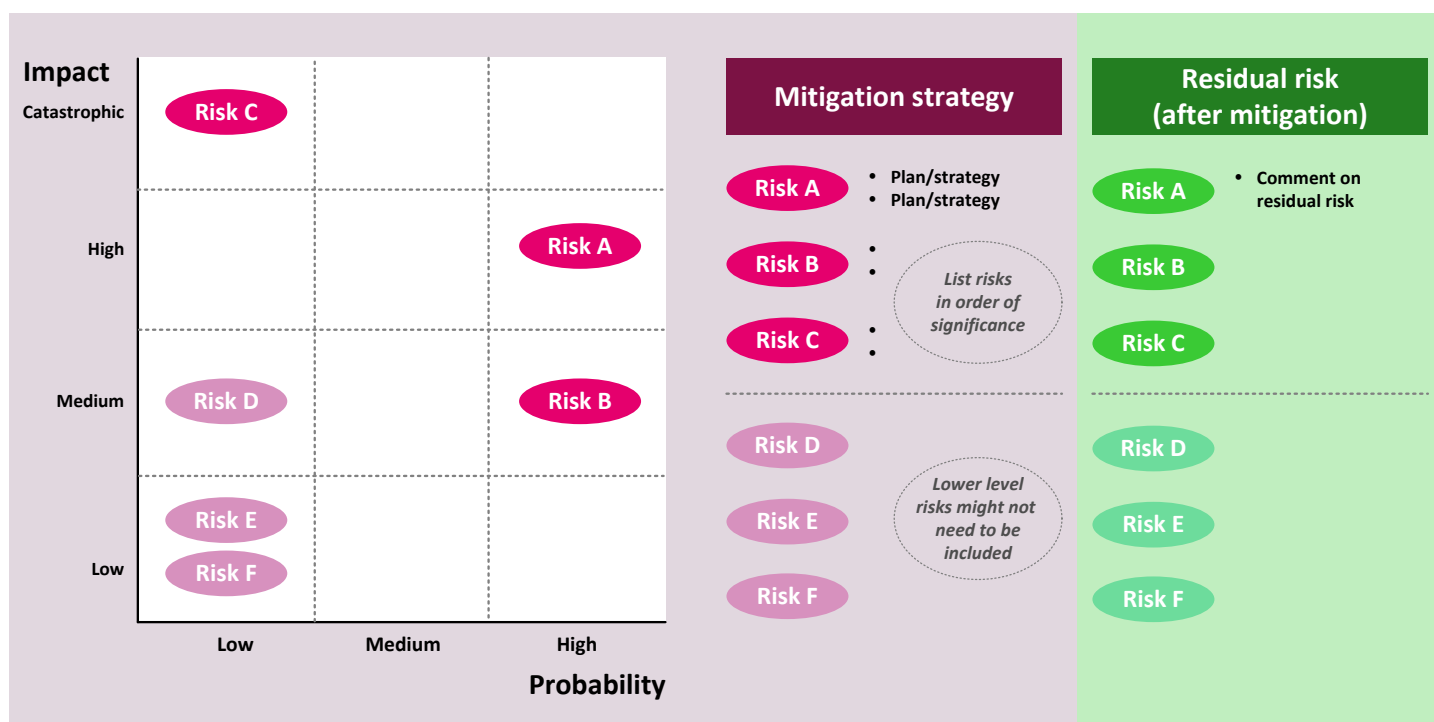
We don't expect to see a full risk analysis in standard policy papers, whether it be a Cabinet paper or a briefing paper to the Minister, Board or Council. This would make the paper far too long and it could lose its impact and utility.

But we do expect an analysis of risk to have been performed, and the results presented in the paper. By this we mean identifying, discussing and mitigating the significant risks, not running through the full range of risks considered in the analysis.

A simple risk assessment framework

Figure 1 Risk assessment framework

Identifying, assessing and developing mitigation strategies



Source: NZIER

Steps for the analysis:

Step 1: Identify risks – this can be based on your knowledge of the issues, modelling, the results of any consultation or engagement, pilots. etc., and/or brainstorming with your colleagues.

Step 2: Assess the probability and impact of each risk.

Step 3: Develop mitigation strategies for the more significant risks – consider whether modifications to the policy could address risks or would alternative options be less risky. We discuss stakeholder engagement and communication strategies later – these are often used as mitigation tools.

Step 4: Identify the residual risk, after the mitigation strategies are applied.

Step 5: Write up the analysis, and include it in the paper – remember you might need to summarise the main conclusions in other parts of the paper e.g. Executive summary, talking points, recommendations.

There are many types of risk

The kinds of risks you will need to think about will depend on the sector you are operating in and the nature of the policy advice.

But here are some common ones:

- **Fiscal** – is there potential for costs to be different to what is expected?
- **Legal** – does the proposal fit within current legislation or are changes needed in legislation or regulations needed? Does the proposal fit within existing legislative norms (e.g. Bill of Rights Act, Human Rights Act, Privacy Act, common law principles, etc.)? Further advice on these matters can be found in the Cabinet Manual (2008) and the Legislation Advisory Committee Guidelines (2014).
- **Interagency** – how will the proposal impact on priorities, work programmes and/or service delivery of other agencies? For Cabinet papers, these sort of impacts are expected to be covered by the CAB 101 requirements for consultation with other agencies.
- **Impacts** – how will the proposals impact on individuals, firms, NGOs, regions, household types, etc.? Are there winners and losers?
- **Stakeholders** – what are the views of different stakeholders about the proposals? Noting that these may differ from a strict winners-and-losers' analysis mentioned above or involve interested observers as well as those directly affected.
- **Media/communication** – is there media interest in the proposals? What's the communications plan for informing interested parties about the changes?
- **Environmental** – what are the short-term and long-term potential impacts on the environment? Are there local government regulatory matters that need to be taken into account?
- **International** – are there any impacts on other countries due to international law, international treaties or bilateral arrangements?
- **Implementation** – How complex is the implementation? Are there timing issues? What level of staff, IT and service delivery changes are required and will other work streams have to be de-prioritised?
- **Treaty of Waitangi** – have you identified anything that could lead to a contemporary breach? Are there impacts for existing and/or future settlements?

If there are no major risks, then say so

Often in a paper we see no absolutely mention of risks. This leaves the reader unclear as to whether there are actually no risks; or whether a risk assessment hasn't been done.

So, if you've done a risk assessment, and there aren't any risks, then be clear about that in the paper. This provides reassurance to decision makers.

Don't go too far

Advising about risks, especially those of a policy project close to the Minister's heart, can be a tricky business. Nonetheless it is still incumbent on policy advisors to do just that.

Stick carefully to the facts, and make the presentation of risks clear, and unemotive.

Occasionally we do see papers where it's very clear the agency is actually opposed to the advice, as evidenced by a very long list of downsides and risks repeated and embellished throughout the paper.

Don't labour the point. It burns relationship capital in what is a repeated game. Provide free and frank advice, highlight the key trade-offs, and move on.

Ministers may very well have different views to those of the policy advisors. That's OK. They may have other priorities in mind, or weigh the benefits and risks differently.

Andrew Kibblewhite in his speech to IPANZ in 2015 offered some good advice for a range of these tricky situations. This is referenced below.

Involve stakeholders

Providing policy advice for more complex issues also brings further complications and risks. Different stakeholders may well have different views as to how things are likely to turn out. That is, they have different views on the probability of an adverse or positive event occurring, and its likely impact.

Having a greater understanding of stakeholder views of policy options is an excellent way to manage risk. It:

- Helps you and the Minister identify and understand the issues of greatest importance.
- Improves the quality of your evidence base and the advice you provide.
- Improves the likelihood that the policy will be successfully implemented.
- Provides support for your Minister in communicating the policy decision.

The gold standard for this is a co-design, or detailed consultation and engagement process. This will ensure that the views of stakeholders can accurately be reflected in policy design, and any points of issue be well known and understood.

Being able to provide this sort of advice to Ministers not only aids the decision making process, but also assists the Minister to manage any future communications or media issues once the policy decisions are made public.

It's not always possible to meet the gold standard due to time constraints, the need for confidentiality and so forth. In those cases, policy advisors will need to rely on a number of sources to identify stakeholder issues and risks.

These might include:

- Good working relationships with key stakeholders where ideas can be tested informally.
- Less formal consultation or engagement processes like focus groups.
- Previous stakeholder comment on the same or similar issues.
- Information produced by stakeholders e.g. media statements, information on websites, etc.

Provide advice and supporting material to help the Minister manage risks

A high level outline of a communications strategy can be a helpful addition to the risk section of a paper. This provides a level of comfort that the risks have been assessed, and practical strategies developed to manage them.

Some talking points for the Minister to explain the policy decisions can help the Minister manage risks. You could think about targeting these for particular stakeholders.

Ensure you cover off risks in the Executive summary

Make sure there is a nod to risks in the Executive summary. An Executive summary is meant to capture the essence of the paper and support the decision maker. Risk is important – so make sure it is in there.

Of course, sometimes the Executive summary is the only part of the paper that is read (or used as a refresher), so the key risks and their mitigation strategies need to be covered in it.

Other useful material

Cabinet Office (2008 – including updates) Cabinet Office Manual <https://cabinetmanual.cabinetoffice.govt.nz/> – see the Principles of Public Service subsection 3.52.

Kibblewhite, Andrew (2015) “Free, Frank, and other F-words: Learning the Policy Road Code”, speech at the IPANZ Free and Frank Policy Advice Seminar, 12 August 2015, <https://www.dPMC.govt.nz/sites/all/files/ipanz-speech-14aug15.pdf>.

Legislation Advisory Committee (2014) Legislation Advisory Committee Guidelines: Guidelines on Process and Content of Legislation, <http://www.ldac.org.nz/guidelines/>.

Ministry for the Environment (2011) Professionalising Policy: Cost Opportunity Benefit Risk Analysis: The COBRA Policy Guide, <http://www.mfe.govt.nz/more/about-us/enhancing-our-policy-advice> – a general guide on policy advice, including a discussion of risk (p. 14, p. 49-52).

Treasury (2008) Statement of Intent 2008 -2013: The Treasury Quality Standards for Policy Advice <http://www.treasury.govt.nz/publications/abouttreasury/soi/2008-13/>.

Treasury (2013) Regulatory Impact Analysis Handbook, <http://www.treasury.govt.nz/regulation/regulatoryproposal/ria/handbook/> – the PIRA Template contains a list of risks that need to be considered in regulatory proposals – this is a good starting point in identifying risks.

Treasury (2015) BBC (Better Business Case) Guidance www.treasury.govt.nz/statesector/investmentmanagement/plan/bbc/guidance – information on optimism bias is included in the Project Business Case methodology.

This paper was written at NZIER, May 2016.

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