

TERM OF REFERENCE NINE: RECOMMENDATIONS

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| <p>9. Make recommendations for action by CAA, the Ministry and industry stakeholders that will increase the efficiency and effectiveness of the rule-making process.</p> |
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Executive Summary:

Recommendations are made which suggest a process in three stages;

- First, the processing of issues that may require a rule change. This is likely to be the most significant process and is depicted in a flow chart at **Appendix 6**. It involves identifying the underlying problem for all triggers, considering various options to resolve the problem (rule-based and other) and choosing a solution or solutions following a standardised Risk Management process. Where a rule-based solution is proposed, a priority-setting process follows. This involves the aviation community before priorities are negotiated between the CAA and the Ministry. The “formal” input from the aviation community is by way of a group referred to in the flow chart as ACAG (Aviation Community Advisory Group). However, the nature of this group or forum needs further consideration and may change depending on the input required at the different stages, or the objective of the consultation.
- Secondly, once a rule proposal has leapt all the hurdles and is accepted into the rule development programme, the process proposed is one that is controlled by the CAA. ACAG has primarily a monitoring and advisory role, with broader consultation proposed at the stage a draft rule and NPRM has been prepared. This stage of the process is depicted in the flow chart at **Appendix 7**.
- The existing process that occurs once the final draft rule is provided to the Ministry, described in table form at **Appendix 5**, is depicted in a flow chart at **Appendix 8**.

Recommendation 1: CAA and aviation community to establish a process for dealing with all potential rule triggers that involves the aviation community, and which effectively limits the proposals that ultimately require new rules or rule amendment

1. I recommend the CAA establish a documented, systematic but flexible process for advancing issues that may require a new rule or rule amendment. This proposed process is depicted in a flow chart at **Appendix 6** and is the subject of further recommendations below. In summary, it should involve identifying the underlying problem for all triggers, considering various options to resolve the problem (rule-based and other) and choosing a solution or solutions following a standardised Risk Management process. Where a rule-based solution is proposed, a priority-setting process follows.

Recommendation 2: Aviation community to establish an aviation community advisory group or forum to meet regularly with the CAA in accordance with this process

2. It is proposed that the “formal” input from the aviation community is by way of a group referred to in the flow chart as ACAG (Aviation Community Advisory Group). However, the nature of this group or forum needs further consideration and may change depending on the input required at the different stages, or the objective of the consultation.

Recommendation 3: While rule Part 11 remains in place, all “triggers” should broadly follow a revised petitions process in accordance with that rule

3. The review concludes that rule Part 11 is inappropriate in its content and unnecessary in its form (legislation). It is important that the CAA follow its own rules and to try to knit the petition process with the recommended process for dealing with all “issue triggers”, I recommend careful consideration be given to a process for dealing with all “issue triggers” which can fit within the structure of Rule 11. By way of example, all issue triggers that pass the preliminary “filtering” test (see below) could be published in

CARRIL together with notice of when the aviation community advisory group or forum will meet to consider the issues, identify the true underlying problems and, as suggested, consider a preliminary risk assessment. The Rule Part 11 process could be adapted from there to tie in with the proposed process of dealing with issues that may require rule change. In the longer term, the preparation of a policy that could eventually replace Rule Part 11 is recommended.

Recommendation 4: The CAA apply a preliminary “filtering” process to “issue triggers” to ensure that those that are plainly unsuitable for the process, or can be simply dealt with are, and the promoter is given reasons for the action taken

4. This step is important to ensure that matters that can effectively be dealt with in other ways do not clog the issue consideration process. I recognise that this suggestion is likely to cause some concern in sectors of the aviation community and it is important that the CAA adopt a measured approach, and that the issue promoter is given clear reasons for the decision or action.

Recommendation 5: For all remaining issues a process of problem identification and preliminary risk assessment is recommended to test whether the issue qualifies for further attention

5. This process must involve the aviation community through either a representative group or a wider forum, depending on what is feasible and achieves the best outcome. An open, public process is envisaged.
6. I envisage the CAA would prepare a report in advance of the meeting of the group/forum for circulation. It would seek whatever input it considered appropriate in preparing that report, if any. I envisage meetings would be held on a regular, scheduled basis, the regularity dependent on the number of issues to be dealt with. I envisage the agenda for each meeting being set well in advance and notified in CARRIL so that those members of the community who are interested can plan to be represented. Where issues involve an element of public interest or specific interest groups may wish to be involved, the CAA should ensure they are identified and notified.

7. It would be preferable if as a result of the forum, all parties were able to agree and articulate the problems and whether they require addressing. However, at the end of the day the CAA must take responsibility for deciding these matters where reasonable agreement is not reached.

Recommendation 6: Risk management process and solution choice: After the problem is identified and articulated, it should be subject to a standardised risk management process and appropriate feasible solutions should be identified and evaluated before a solution is selected

8. This is likely to be the most significant stage in the process. It may take some time and may involve several steps. The process and timeframes should be flexible, depending on the nature of the problem. The CAA may seek to involve experts, consultants, and/or aviation community members in its preparatory work.
9. It is envisaged the CAA will take responsibility for the preparatory analysis. Some form of consultation or discussion document should be produced. I anticipate that analysis will attend to such matters as –
 - 9.1 confirming or advising the initial risk assessment of the problem;
 - 9.2 proposing realistic options to mitigate the risk;
 - 9.3 providing an indicative cost benefit analysis for each option;
 - 9.4 recommending solutions; and
 - 9.5 identifying the consequential impacts of any solution.
10. The risk management process will require standardised criteria. It should not be too inflexible but should be consistent, so that the risks associated with various problems and their management by various solutions can be compared.

11. An indicative cost benefit analysis will be necessary for each feasible option to assist with solution choice, but this is likely to be at a very high level of generality at this stage. A sensible approach to the extent of the analysis will be required. The objective at the early stage is to take a consistent approach, enable some options to be discounted and draw out the issues for further consideration. A rule-based solution will take into account the costs of the regulatory process.
12. Debate between the CAA and those participants in the aviation community and general public who are interested in the particular problem is then envisaged. Again, striving for an agreed appropriate solution and outcome is encouraged but not required.
13. In light of the pressures on the rule-making process and the limits of legislating for safety, the selection of a rule-based solution should be made only if satisfied such is necessary.
14. Once a solution is selected, the process from there on will depend on the choice. The recommendations that follow refer only to rule-based solutions.

Recommendation 7: Proposed rule-based solutions are prioritised following consultation with the aviation community

15. It is recommended that, for all proposed rule-based solutions, there be a priority setting process to guide the negotiation of the annual rule development services agreement. The process should involve conferring with the aviation community group or forum in about November/December of the year prior to the rule development programme year beginning 1 July. All rule-based proposals should be subject to this process unless there are special circumstances of urgency or simplicity, which permit the proposal to enter the process without being included as part of the agreed rules programme. I understand the Ministry and the CAA have some flexibility around this, and simple technical amendments could be accommodated reasonably quickly.
16. Again it is envisaged that the CAA will prepare and provide a report or discussion document to the aviation community advisory group/forum proposing priorities for the rule programme, with reasons in support. It is anticipated these would be based on the

outcome of the risk management process so that those rules that give the greatest safety dividend have the highest priority. Nevertheless the criteria should be disclosed and the subject of discussion. The CAA should also indicate the nature of the process it intends to follow for each rule (including use of technical or interest groups for technical, commercial or policy advice) and indicative timeframes. I note that, as part of the rules development agreement, the Ministry requires a consultation plan for each rule.

17. The aviation community advisory group or forum would endeavour to agree on priorities for recommending to the Minister, and consider and respond to the proposed process and timeframes.

Recommendation 8: At each stage the necessity or desirability for an interim or alternative solution, including the “do nothing” option, should remain under consideration

Recommendation 9: The CAA is wholly responsible for preparing the draft rule and NPRM.

18. The process to be followed once a rule proposal has been accepted into the rule development programme is controlled by the CAA as it sees fit, and monitored by the aviation community advisory group. This stage of the process is depicted in the flow chart at **Appendix 7**. It is envisaged that the process to be followed in relation to each particular rule development project will have been signalled by the CAA to the aviation community and the subject of discussion at an earlier stage. It is recommended that the rule process and progress be monitored throughout by monthly reports to the aviation community advisory group as well as to the Ministry in accordance with the current agreement. Those reports should be made available to the wider aviation community and public, through CARRIL or the CAA website. The primary focus of monitoring will be to keep the aviation community informed of progress and enable it to make suggestions as to source of particular expertise or information to assist the CAA. The CAA should use such resources etc as it requires. It should consider engaging expert

advice on any matters, including the implications for disabled persons, where that expertise is not within the CAA.

Recommendation 10: That the CAA confers with the aviation community advisory group on the draft NPRM and rule

19. I recommend that the draft NPRM and rule be provided to the aviation community advisory group or forum (as appropriate) before submission to the Ministry for approval. In appropriate cases where, for example, a rule is controversial or requires explanation, then a presentation may be warranted. The CAA should invite and take into account any feedback at this stage before the draft NPRM and rule is referred to the Ministry in accordance with the Ministry's requirements.
20. Following approval by the Ministry, the NPRM would then be published in accordance with the Act and submissions received.

Recommendation 11: The CAA prepare a careful "outcome" document in all cases which summarises the submissions received on the published NPRM and provides a clear statement of the CAA's response to those submissions, with reasons.

21. It is important that the CAA consider all submissions, whether they raise new or old matters, with an open mind. This document is important. It should ensure that the CAA's response to each submission (or category of submission, where appropriate) is apparent, and that any revisions to the draft rule as a result of submissions are clearly explained. There may be circumstances where the CAA would want to consult with affected persons before revising a draft rule and, of course, where the revision is substantial, then a fresh NPRM may be required.

Recommendation 12: The CAA then provides the revised draft rule and outcome document to the aviation community.

22. Again, this may require a presentation or a meeting or simply circulation, depending on the nature of the issues. The primary objective at this stage would be to inform the aviation community of the rule which is to be provided in draft to the Ministry. It is unlikely that changes of substance would be contemplated at this stage.
23. The final draft rule is then submitted to the Ministry with the necessary papers. The process

Recommendation 13: That the Ministry consider whether the 20 week minimum process can be abridged in any particular case

24. The existing process that occurs once the final draft rule is provided to the Ministry, is described in table form at **Appendix 5**, and depicted in a flow chart at **Appendix 8**. Parliament and the Executive require certain steps to occur, and there is a limit to the changes the Ministry can make to this process. However, I suggest that, if the Ministry is persuaded that a careful, robust and inclusive process occurs before a draft rule is provided to it then it is likely to have more confidence to advance through the steps.

Recommendation 14: That the Ministry, Regulations Review Committee and Minister treat post-process submissions on matters of expert judgement with caution

25. Here the thorough and inclusive nature of the process that has been undertaken by the CAA will likely be influential. Where the CAA has, on the basis of information, expertise and experience, made judgements which will inevitably have adverse impacts on some members of the aviation community, it is important that those participants are not then encouraged to undermine the process that has gone before by effective lobbying when unhappy with the outcome.

26. Obviously, there is a balance to be struck here. The CAA must be ready to deal effectively with lobbying activity by ensuring that its analyses, including its risk management and cost benefit analyses, are robust. Robust processes should ensure that last ditch lobbying is ineffective by giving those outside the process comfort that the process can be trusted.

Recommendation 15: That the Minister provide clarification to the CAA of the Government's aviation safety philosophy and/or the strategic direction for ordinary rules

27. It seems that ambiguities have arisen from the change in the philosophy of central government towards 'devolution', and this is perceived as potentially having an impact on the strategic direction for the rules and safety philosophy of the CA Act. This, together with the reality that not all aviation participants can be relied on to assume the responsibilities of a robust safety culture, some form of policy direction to the CAA or clarification of the Minister's strategic direction on rules might be of assistance.

Recommendation 16: The aviation community is to be encouraged to form representative groups and take up opportunities to participate in the process

27. The above process is not intended to limit or dilute the level of influence the aviation community can have on the process but rather to ensure the process is not dysfunctional. If the aviation community can formulate agreed positions on any issue, these will likely be persuasive.
28. It is recommended that, to encourage representation from a range of interests groups, the CAA consider providing scheduled expenses to qualifying groups, and take appropriate steps to facilitate the participation by small business people and recreational interests as suggested under Term of Reference 6.

Recommendation 17: That the Ministry recognises the implications of the process recommended by this review for funding, in particular the moving of much of the strategic consultation currently funded under the rule services development agreement out of that process

29. Currently the strategic consultation processes largely take place within the CIRAG/TSG processes in the course of rule development and are covered by the agreement. Under these recommendations, they would occur prior to the rule development services purchased. It is recommended that the funding arrangements take this into account.

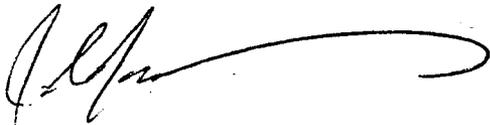
Review of participation of interested persons in the development of ordinary civil aviation rules.

The Director of Civil Aviation engages the Independent Reviewer to conduct the review of the process for interested persons to participate in the development of ordinary civil aviation rules as follows;

Outcome desired: Report and recommendations for an effective and efficient process of public and industry participation in the development of ordinary civil aviation rules.

Terms of Reference

1. Review and summarise the statutory, contractual and other requirements placed on CAA for the making of ordinary civil aviation rules;
2. Identify and summarise the needs of the main stakeholders – Minister, CAA, industry and the public – and their respective roles/responsibilities in the rule making (consultative) process;
3. Identify
 - a. The stages of rule making where external inputs are required, and
 - b. The nature of the input required by CAA at each stage in developing ordinary rules and how the appropriate input can be obtained;
4. Review the effectiveness of existing CAA systems for rule making, including the setting of rules development programmes and priorities, with particular regard to the management of external inputs;
5. Review the original purpose of the CAA/Industry Rules Advisory Group (CIRAG) and assess the extent to which this remains valid in light of the current arrangements and regulatory environment for making ordinary rules;
6. Review the results of experience with the existing CIRAG processes and identify deficiencies in their design and operation;
7. Consider the recommendations made by the 2001 Ministerial Review of CAA in the area of rule making and analyse the issues that gave rise to these recommendations;
8. Identify and analyse the characteristics of a desired system of external consultation that would meet the needs of stakeholders and address the known deficiencies;
9. Make recommendations for action by CAA, the Ministry and industry stakeholders that will increase the efficiency and effectiveness of the rule making process.



John Jones

Director of Civil Aviation

10th May, 2002

PROCESS FOLLOWED

The following process was followed in responding to the Terms of Reference of the Director of Civil Aviation dated 10 May 2002:

The Director advertised the Terms of Reference for this Review, and an introductory meeting to be held at Wellington on 13 June 2002, in various civil aviation publications and on the CAA website (www.caa.govt.nz).

At the introductory meeting on 13 June 2002 I summarised the proposed process I intended to follow and answered questions. Memorandum No. 1 was issued summarising those matters and published on the CAA website.

Submissions were sought from interested persons before 31 July. I received 26 written submissions, some well into August. A list of the persons and groups who made submissions appears at **Appendix 3**.

The CAA prepared background information by way of reports related to the first five Terms of Reference. These were published on the website.

I held interviews with submitters and several others who indicated a wish to speak to me on 15 August in Christchurch and 5 and 6 September in Auckland. I met with submitters in Wellington on 3, 4, 9, 12, 13, 17, 19 and 30 September, and on 2 October. I understand that all those who indicated a wish to speak to me were afforded that opportunity. Persons and groups interviewed are listed at **Appendix 3**.

I reviewed all the information received and requested further information from various persons and organisations including the Civil Aviation Authority and Ministry of Transport.

Following receipt of a submission from the Ministry that rule Part 11 should be revoked, I indicated an opportunity for anyone interested in making further submissions on that point to make these available before 8 November. I received a further nine submissions, including the Ministry's, specifically on rule Part 11.

This report is the product of my consideration of the various submissions received and a broad range of materials.

SUBMISSIONS RECEIVED

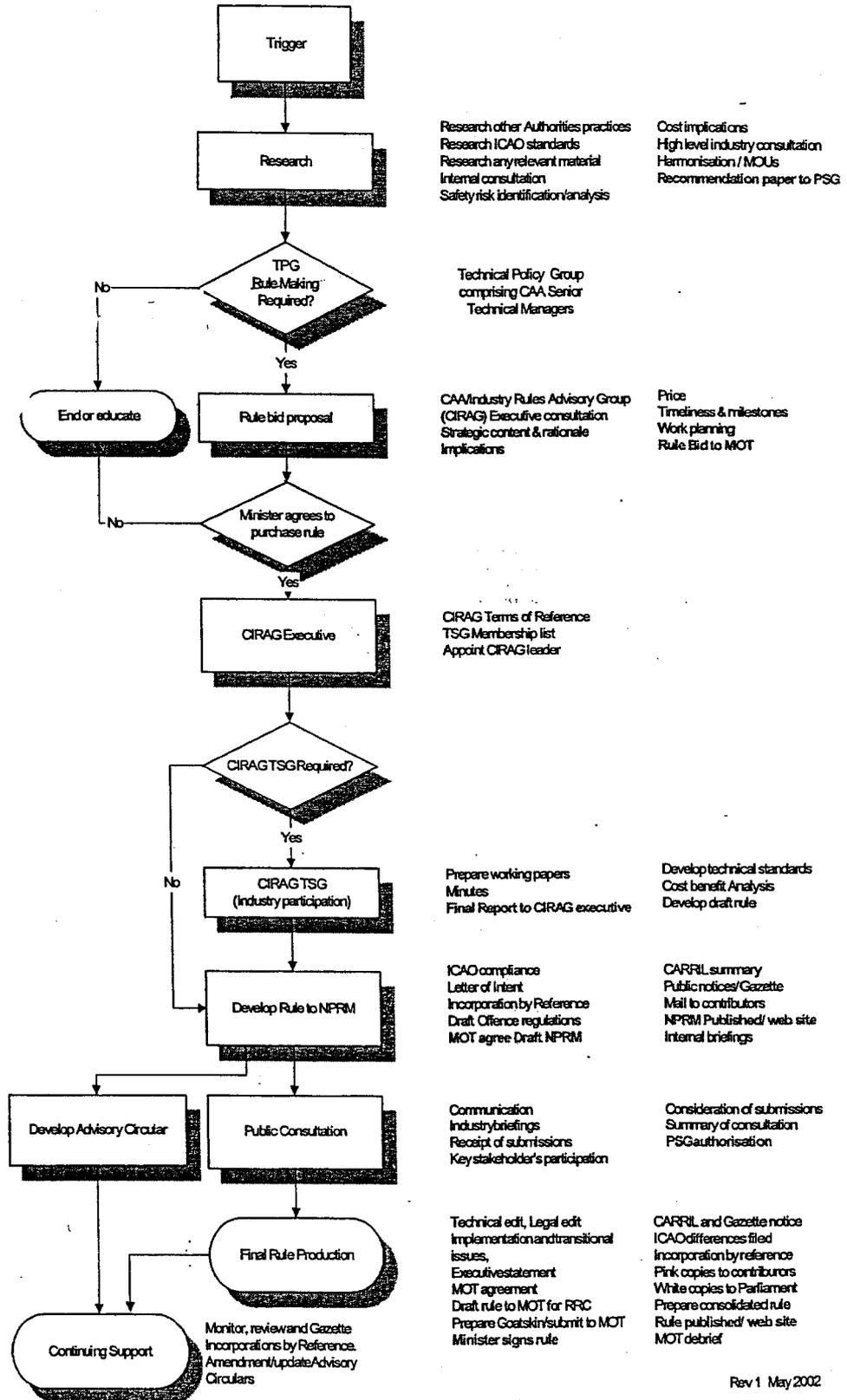
Submissions were received from the following:

Aviation Industry Association of NZ (Inc)
AALEDA
Aero Technology Ltd
Aircraft Owners' and Pilots' Association (NZ) Inc
Aviation Theory Centre (NZ) Ltd
Avkair Ltd
Civil Aviation Authority of New Zealand
GAANZ
Geoff Eban, Gregg Barrow, John Funnell, Industry Representatives on the CIRAG Executive
Gliding New Zealand
Helicopter Services (BOP) Ltd
Helicopters NZ Ltd
John Bushell, Chairman Part 43 Review
John Clements
Ken MacKenzie
M A Talbot & R Dawson
Ministry of Transport
NZ Aviation Federation
Peter G Beaumont & Peter Houghton, Royal NZ Aero Club Inc. and NZ Warbirds Assn
Robyn Reid
The Aviation Medical Society of Australia & New Zealand (NZ) Inc
The New Zealand Air Line Pilots' Association

PERSONS INTERVIEWED

Representatives from the following groups were interviewed:

Aero Technology Ltd
Air Fiordland & Southwest Helicopters
Air National
Air New Zealand Group
Airways Corporation of New Zealand Ltd
Alpine Fighter Collection
Ardmore Flying School
Aviation Industry Association of NZ (Inc)
Civil Aviation Authority of New Zealand
GAANZ
Gliding New Zealand
Industry Representatives on the CIRAG Executive
M A Talbot & R Dawson
Ministry of Transport
Ntech
Royal NZ Aero Club Inc. and NZ Warbirds Association
Sport Aircraft Assn NZ Inc
The New Zealand Air Line Pilots' Association
Paul Gibson, Consultant, Disability Issues



Rev 1 May 2002

Figure 1. The civil aviation rule-making process

Table 1 Indicative Rule progress in the Ministry of Transport following receipt of white (final) draft of rule

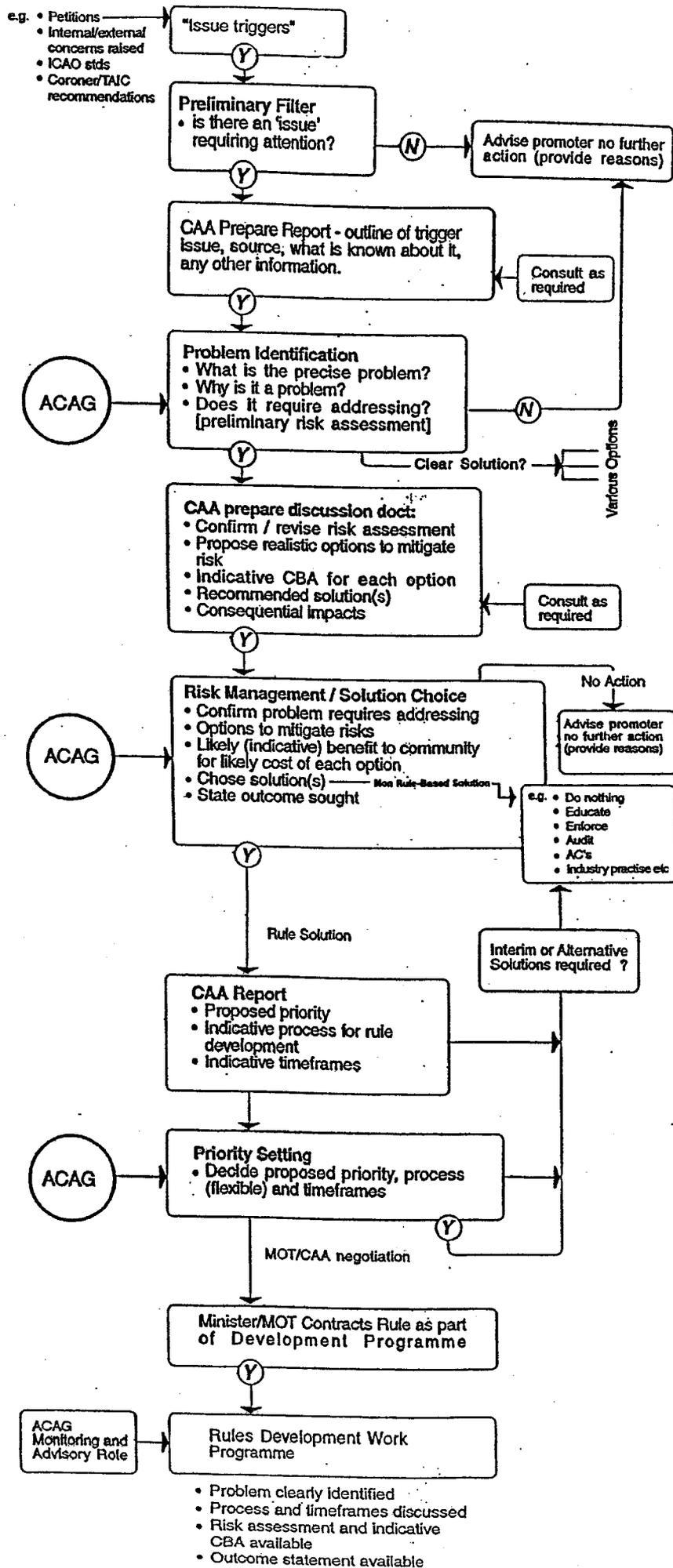
Note: Italics used to denote a regulation change

Time	Action	Notes
Week 1	<ul style="list-style-type: none"> • Rule received and checked by Ministry. Agency clarification obtained on any issues. 	This assumes that the white draft is of appropriate quality to progress through the final process
Week 2	<ul style="list-style-type: none"> • Checking and clarification continues. • <i>Paper to Minister for authority to instruct Parliamentary Counsel (PCO) if Regulation change required.</i> 	
Week 3	<ul style="list-style-type: none"> • Rule sent to Regulations Review Committee (RRC). • Ministry starts drafting paper to Minister and Cabinet Paper(s) for Cabinet Finance Infrastructure and Environment (FIN) Committee (<i>and Legislation (LEG) Committee for any regulations</i>). • <i>Drafting of PCO instructions starts where appropriate.</i> 	
Week 4	<ul style="list-style-type: none"> • First RRC meeting • <i>Ministry drafting continues</i> 	RRC require 3 weeks to consider a rule
Week 5	<ul style="list-style-type: none"> • Rule being considered by RRC • Ministry drafting continues. 	
Week 6	<ul style="list-style-type: none"> • Final RRC meeting • <i>Instructions at Parliamentary Counsel (if applicable)</i> 	Ministry to consult on paper to Minister and Cabinet Paper(s) with relevant transport agency
Week 7	<ul style="list-style-type: none"> • Draft Cabinet Paper(s) sent to appropriate Government Departments for comment 	2 weeks allowed for departments to comment
Week 8	<ul style="list-style-type: none"> • Departments consider draft Cabinet Paper(s) 	
Week 9	<ul style="list-style-type: none"> • RRC and Departmental comment received. 	More time will be required to consult

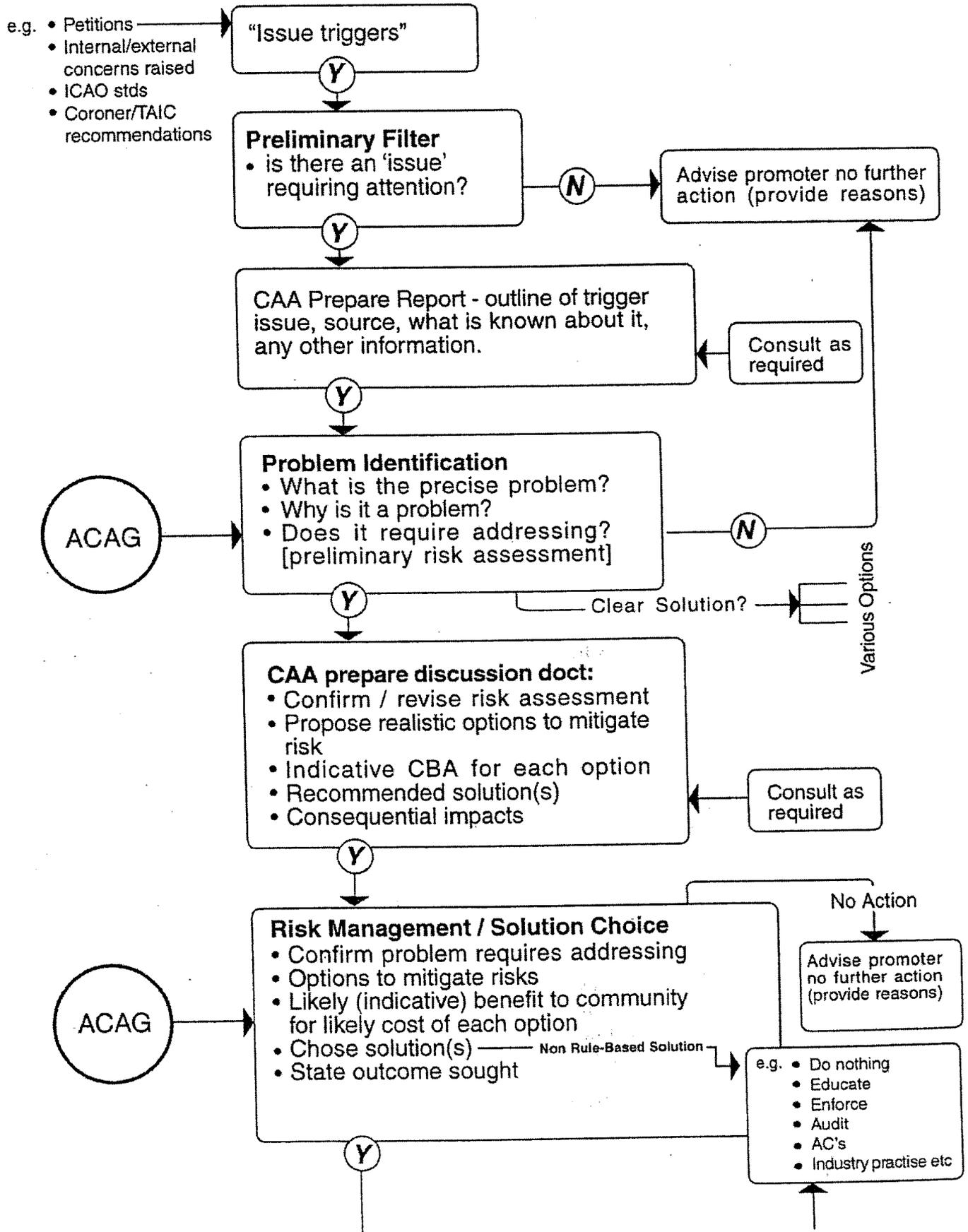
	<ul style="list-style-type: none"> Ministry considers comments, and consults with Minister and agency as appropriate. 	with agency in case of adverse comment.
Week 10	<ul style="list-style-type: none"> Ministry consider and consult on comments and revise papers. <i>PCO draft of any regulations would be approved by Ministry/agency at this stage</i> 	
Week 11	<ul style="list-style-type: none"> Paper for Minister and Cabinet Paper(s) finalised Internal Ministry sign off. 	
Week 12	<ul style="list-style-type: none"> Papers to Minister Minister considers papers and consults with Coalition Minister. 	
Week 13	<ul style="list-style-type: none"> Minister considers and consults. FIN paper to be lodged with Cabinet Office by 10am Thursday 	More time will be required if the House is in recess.
Week 14	<ul style="list-style-type: none"> <i>LEG Paper for any Regulations lodged with Cabinet Office by Monday 10am for any Consequential Regulations</i> FIN Meeting - Wednesday <i>LEG meeting – Thursday</i> 	
Week 15	<ul style="list-style-type: none"> Cabinet Meeting on Monday - Minister signs Rule following Cabinet meeting. 	1 week allowed post - Cabinet for Minister to sign rule.
Week 16	<ul style="list-style-type: none"> Notice of Rule placed in <i>Gazette</i> (Thursday) Any regulations signed (Monday) by Governor-General and Gazetted on Thursday 	
Week 17	<ul style="list-style-type: none"> 28 day Gazette Period 	
Week 18	<ul style="list-style-type: none"> 28 day Gazette Period 	
Week 19	<ul style="list-style-type: none"> 28 day Gazette Period 	
Week 20	<ul style="list-style-type: none"> 28 day Gazette Period ends on Friday – Earliest date rule can come into force. 	

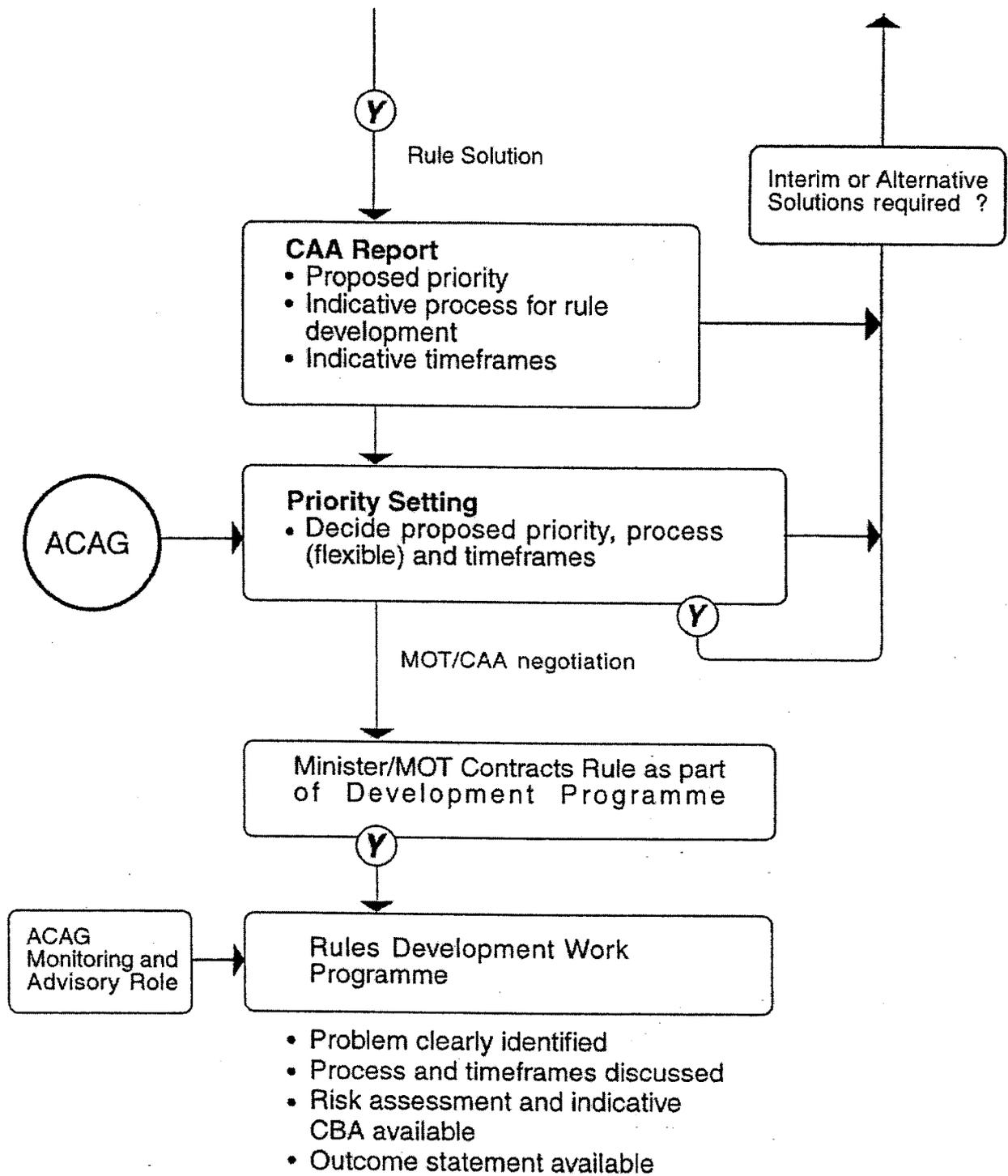
Note: These timings are minimal - Ministry resources may not always immediately available.

Outline For Processing Issues Which May Require Rule Change

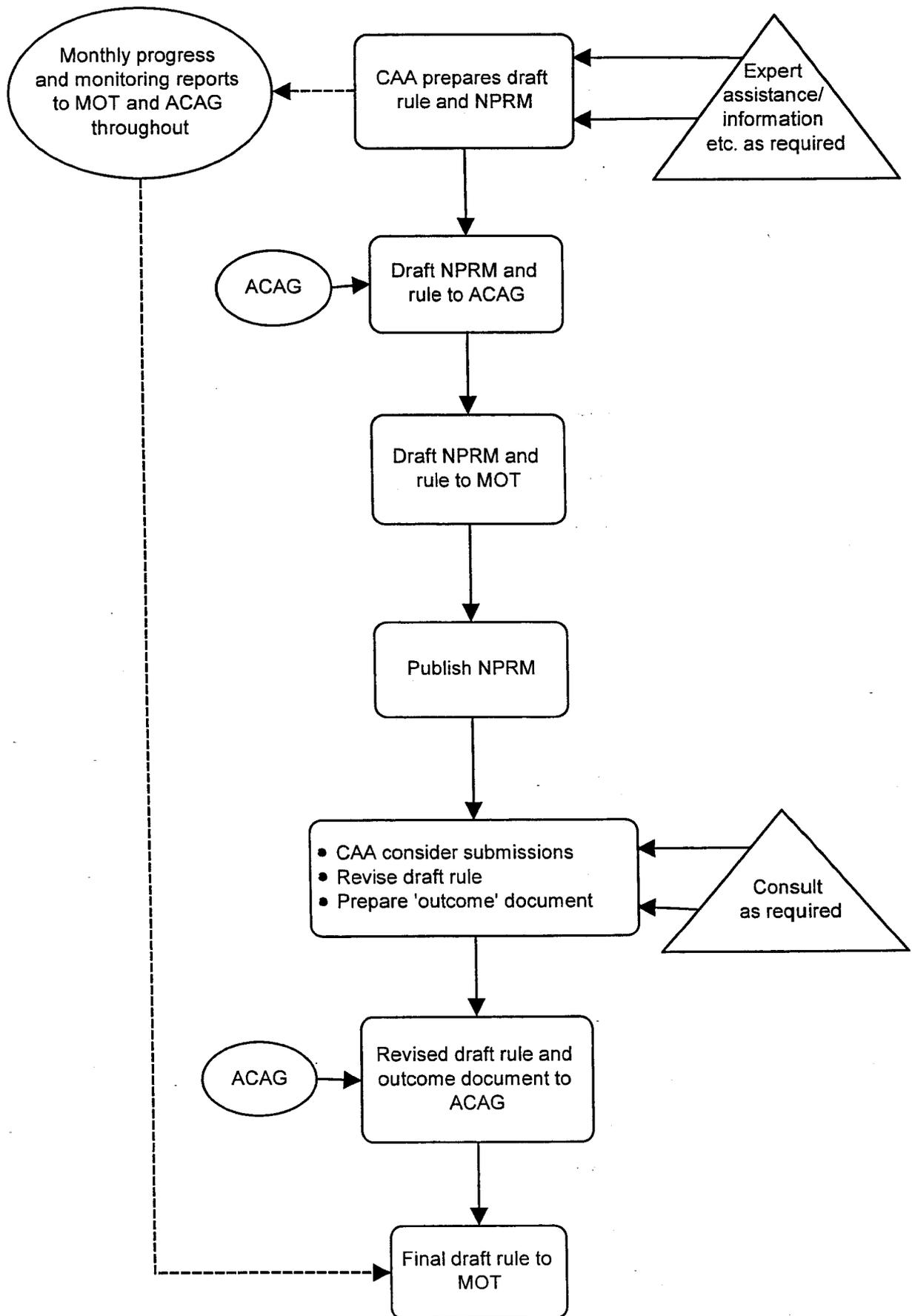


Outline For Processing Issues Which May Require Rule Change





RECOMMENDED RULE DEVELOPMENT PROCESS: CAA



CURRENT RULE DEVELOPMENT PROCESS: MOT