
F Integration of the RIS process — international experience

This appendix discusses the international experience of integrating the RIS process into policy development.

Several OECD countries have RIS (or Regulation Impact Assessment) requirements designed to improve the regulatory process and provide benefits to their communities. Of these, the United Kingdom, Canada and the United States have been chosen because of their similar institutional background to Australia and their approach to integrating the RIS process.

A number of aspects of the RIS process are examined including the trigger, the use of milestones, and accountability provisions. A key characteristic of the RIS requirements in each of these countries is the preparation of a RIS early in the policy development process.

United Kingdom

In 1998, the British Prime Minister announced that ‘no proposal for regulation which has an impact on businesses, charities or voluntary bodies, should be considered by Ministers without a Regulatory Impact Assessment (RIA) being carried out’ (Regulatory Impact Unit 1998, p. 2). Throughout the regulatory development process there are a number of milestones and UK Government agencies are encouraged to incorporate the RIA process as early as possible, beginning with the preparation of an *initial RIA* — a preliminary working assessment of the policy options using information already available.

If Ministers decide to proceed with the issue, then a *partial RIA* provides a more detailed analysis of the various policy options. Partial RIAs are used as the basis for public consultations. They include an analysis of the risks, benefits, costs and compliance issues for each option.

A *full RIA* is prepared in light of consultation. It includes detailed information on all aspects of the regulatory proposal, including addressing the views of stakeholders. The full RIA also makes a clear recommendation to the Minister(s). If a regulatory

or legislative option is chosen, there is an expectation that the benefits will almost always exceed the costs.

With regard to accountability, there is a signed declaration by the responsible minister at the end of the full RIA and the following wording is recommended '*I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs*'.

Once signed by the Minister, the *final RIA* is placed in the House libraries when the regulation/legislation is presented to Parliament. It is also the recommended practice that RIAs be made available on departmental websites in a clear and accessible manner and linked to the Regulatory Impact Unit website.

Departments are required to report progress on regulatory issues in the following ways:

- *Producing a monthly report on full regulatory impact assessments.* Any RIAs showing a cost or benefit to businesses, charities or voluntary bodies are listed on the Cabinet Office website, together with the name of a departmental contact from whom further information can be sought.
- *Preparing a biannual Command Paper which lists all full RIAs.* The Minister for the Cabinet Office presents the Command Paper to Parliament.
- *Publishing in their annual report an account of their regulatory performance.* This includes, for example, work that has been carried out to reduce unnecessary regulatory burdens throughout the previous financial year.

Canada

Canada has a broad regulatory impact analysis trigger, encompassing all forms of regulation, regardless of impacts. The Canadian Government requires that, before pursuing regulation, departments prepare a Regulatory Impact Analysis Statement (RIAS). Pursuant to the *Regulatory Policy*, the RIAS includes an identification of the problem, the need for regulation and regulatory alternatives, a cost–benefit analysis and public consultation (Government of Canada 1999).

The Canadian *Guide to the Regulatory Process* (Government of Canada 2001) notes that before drafting a regulatory proposal it may be necessary to involve the public in problem definition and solution identification. Early notice improves the regulatory process as regulations involving early and genuine consultation are more likely to be accepted than those that are not. Departments can engage in early notification by:

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- developing a website and/or other information vehicles that outline their regulatory plans;
 - preparing a one-year Report on Plans and Priorities to be tabled in Parliament — an opportunity to advise politicians, interested groups and individuals of forthcoming regulatory initiatives; and
 - publishing a Notice of Intent in the *Canada Gazette*, thereby launching the process of public consultations.

After notification, departments are expected to produce a *draft* RIAS consistent with the requirements of the Regulatory Policy.

With regard to accountability, the Regulatory Affairs Division in the Privy Council Office then reviews the RIAS for consistency with the Regulatory Policy. If required, changes are made to the RIAS, then the Minister(s) responsible for the proposal grants his/her approval to the proposed regulation and the RIAS by signing the cover page. In circumstances where the proposal involves another organisation (such as an authority), the RIAS must be signed by the chairperson of the relevant board as well as the sponsoring Minister(s).

Once again, the Regulatory Affairs Division reviews the RIAS before writing a briefing note for the Ministers of the Special Committee of Council. The draft regulations and the RIAS are pre-published in the *Canada Gazette*, providing another opportunity for public comment and input. The RIAS is then updated to reflect information and comments received during the pre-publication period.

The RIAS serves as the sponsoring Minister(s) recommendation to colleagues on the Special Committee of Council and provides important information for their consideration and decision.

The Standing Joint Committee for the Scrutiny of Regulations monitors the exercise of regulatory power on behalf of the Parliament. Its mandate is to review regulations and other statutory instruments after they are made. The Committee checks the instruments against the criteria approved by the Senate and the House of Commons at the beginning of each session of Parliament.

When the Committee finds a problem with an instrument, it informs the regulation-making authority and suggests solutions. If a solution cannot be found, the Committee may draw the matter to the attention of both Houses of Parliament. In certain circumstances, the Committee is also authorised to propose the disallowance of the instrument, and if the motion is passed the instrument is revoked.

United States

Since 1980, the United States Government has required its agencies to prepare, biannually, a regulatory flexibility agenda containing:

- a brief description of the subject area and nature of any rule which the agency expects to propose that is likely to have a significant economic impact on a substantial number of small entities; and
- the name and telephone number of an agency official with knowledge concerning the items listed in the agenda (Office of Advocacy 2000).

Each regulatory flexibility agenda is also submitted to the Small Business Administration for comment. The agency concerned is also required to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda and to invite comments upon each subject area on the agenda.

In addition to the regulatory flexibility agenda, the agency is required to prepare and make available for public comment an *initial* Regulatory Flexibility Analysis (RFA). The analysis describes the impact of the proposed rule on small entities. This initial RFA (or summary) is published in the Federal Register and a copy is provided to the Small Business Administration.

When an agency implements a regulation, it is required to prepare a *final RFA*. The final RFA is a detailed description of all aspects of the regulatory proposal, including a summary of the significant issues raised in public comments in response to the initial RFA and a statement of any changes to the proposed rule as a result of such comments.

The agency is required to make copies of the final RFA available to members of the public and publish (at least) a summary of the analysis in the Federal Register.

To promote compliance with the RFA process, the Office of Advocacy in the Small Business Administration publishes its *Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act*. The report is an overview of the regulatory initiatives undertaken by US federal agencies in any given year and the financial savings that have resulted through use of the RFA process. Over the period 1998-2000, the Office estimated that the RFA process had saved US\$20.6 billion in regulatory costs, without compromising public policy objectives (Office of Advocacy 2000, p. iv).

In 1996, Congress signed the *Small Business Regulatory Enforcement Fairness Act*, authorising the courts to review agency compliance with the RFA, whilst taking

account of the input of small businesses. This provided the RFA process with an enforcement remedy for the first time. Small entities have rarely challenged the need for regulatory solutions, but the information they provide has often challenged agency estimates as to cost and regulatory effectiveness. As a result of this process, major changes to regulatory proposals have been made (Office of Advocacy 2000).

Concluding remarks

The United Kingdom, Canada and the United States have adopted similar strategies to integrate the RIS process into policy development. Their governments require or encourage:

- early notification of the regulatory proposal to interested parties and a preliminary RIS (or equivalent);
- the development of the regulatory analysis over time, and with the benefit of public consultations; and
- accountability for the analysis (or regulation) by way of ministerial (or agency) responsibility or court enforceable reviews.