

4 May 2012

RIA Benchmarking Study
Productivity Commission
GPO Box 1428
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Dear Sir/Madam

Submission to the Regulatory Impact Analysis: Benchmarking Issues Paper

The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to provide comment on the *Regulatory Impact Analysis: Benchmarking* issues paper.

While *ex post* evaluation of regulation can inform policymakers about the effectiveness of regulations, the benefits of these regulatory outcomes and the costs imposed by the regulation, it does not usually seek to identify whether there are better alternatives. Thus at the outset of the policy development process, *ex ante* evaluation of the proposed policy response should be undertaken to choose the best response option as part of the Regulatory Impact Analysis (RIA) process.

Ideally governments should use the RIA as a formalised process to define policy objectives, identify possible consequences of introducing regulation, and review the likely costs, benefits and uncertainties of regulations. The expectation of the RIA process is to discover if the benefits of a proposed regulation justify the costs and to ascertain which of the alternatives would be the most cost-effective.

However it is clear that the use of the RIA process has not been as widespread or as robust as intended. A RIA must clearly indicate the costs to business of not only complying with the proposed regulation, but also the cost in terms of industry funding the regulation, lost opportunities, reduced incentives and loss of competitiveness.

It is a common practice that once a proposed policy or regulatory response has been established, the RIA is used as an additional procedural requirement to justify the merits of the policy, rather than a process to carefully examine the proposed regulatory actions and its policy alternatives. Politically sensitive regulations that have a significant impact on business community are more likely not to have their RIA adequately completed.

Notwithstanding recent commitment by the Australian Government and COAG to enhance and strengthen their respective RIA processes, Australian businesses continue to express concern and disappointment with RIA processes. They are often less than adequate and comprehensive, even for major policy proposals, do not allow adequate consultation with stakeholders, and RIA documents are neither readily available nor easily accessible.



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The vast majority of Commonwealth regulations recently tabled by the Australian Government underwent no more than a preliminary self-assessment by the departments and agencies responsible for the regulation. In 2007-08, only around 2 per cent of regulatory proposals tabled required a regulatory impact analysis¹.

For regulatory proposals tabled by the Australian Government in 2010-11, of the 63 RIAs required at the decision making stage, 14 cases were granted 'exceptional circumstances' by the Prime Minister. Consequently, for the 63 decisions requiring a RIA, 47 RIAs were prepared and assessed as adequate, giving a compliance rate of 75 per cent. It is concerning that RIA compliance at the decision making stage fell from 94 per cent in 2006-07 to 75 per cent in 2010-11, while the publication of RIAs (i.e. transparency stage) fell from 94 per cent in 2006-07 to 71 per cent in 2010-11 (see Table 1).

Businesses are concerned that most of the proposed regulations that proceeded without undergoing the RIA processes often imposed the greatest cost and compliance burden on their businesses. For example, eight proposals proceeded to the decision makers without the support of an adequate RIA in 2008-09, including the proposal that requires unit pricing by grocery retailers, and the proposal that expands the Renewable Energy Target from 9500 GWh to 45000 GWh by 2020; while in 2010-11, the suspension of live cattle exports to Indonesia proceeded without the support of an adequate regulatory impact statement.

Table 1: Regulatory impact analysis compliance, 2007-08 to 2010-11

Stage	Type of RIA	2007-08 ratio ^a	%	2008-09 ratio ^a	%	2009-10 ratio ^a	%	2010-11 ratio ^a	%
Decision making stage	RISs	43/48	90	45/53	85	63/75	84	47/63	75
	BCC reports	7/7	100	4/4	100	2/2	100	n/a ^c	
Transparency stage^b	RISs	41/45	91	41/49	84	59/74	80	45/63	71
	BCC reports	6/7	86	4/4	100	1/2	50	n/a ^c	
Exceptional circumstances		3		6		4		14	

Note: ^a Ratio of adequate RIAs and Business Cost Calculator (BCC) reports to the total number of RISs and BCC reports required. ^b The number of RIAs required at the transparency stage is lower than at decision making stage because some regulations were subject to multiple decision-making processes. ^c Under the best practice requirements that apply from 1 July 2010, a RIS is required rather than a BCC report.

Source: OBPR 2011, *Best Practice Regulation Report 2010-11*, p.11.

Moreover, the carbon pricing regime announced by the Government including the associated regulation, the creation of major new bureaucracies and regulators and the large scale budget spending on mitigation measures have by-passed any robust cost benefit analysis or structured RIA process. Treasury modellings on the economic impact of the *Carbon Policy Reduction Scheme* in 2008 and the *Clean Energy Future Plan* in 2011 were only available after the legislation had been introduced to the Parliament.

¹ Office of Best Practice Regulation (OBPR) 2008, *Best Practice Regulation Report 2007-08*, p.15.

Therefore, ACCI argues that:

- i. The RIA process should include a detailed consideration in ways to address policy objectives through the most appropriate policy responses. As such, RIA should be completed at the early stage of the new policy development process rather than as the last step to justify the merits of the policy decision. Moreover, no action/regulation option should always be the baseline scenario.

For example, during the consultation to extend the Do Not Call Register to business numbers, the RIA statement was published in the early stage of the policy development process and ACCI was directly invited by the Department to comment on the statement. Following consultation, the Government did not proceed with the policy to extend the register to business numbers as the regulatory cost far outweighed the benefits of the proposed regulation.

- ii. RIA should include ex ante impact assessment information that are proportional to the significance of the proposed regulation, including the appropriate cost and benefits analyses of the new regulation. For regulatory proposals that are perceived to have significant economic, social and environmental impact, ex ante assessment of costs, benefits and risks of the proposed regulatory response should be quantitative when possible.

The assessment of regulatory cost should include both direct cost (e.g. administrative and compliance costs) and opportunity cost borne by the government, businesses and households. Given that small businesses usually suffer disproportionate regulatory costs, RIA should seek to evaluate the regulatory impact on SMEs and demonstrate how administrative and compliance costs can be minimised.

Given that not all government departments/agencies have the required expertise to prepare the cost and benefit analyses for new regulatory proposals in-house, resource sharing within the public sector should be explored before engaging external consultants.

- iii. The authority that oversees the RIA process should be statutorily independent to ensure that the oversight body has strong gatekeeping powers to enforce RIA requirements. Thus, the Office of Best Practice Regulation should be more appropriately part of the Productivity Commission, rather than under the Department of Finance and Deregulation.

Effective regulation can significantly improve government performance and help to deliver optimal social and economic outcomes. Reducing unnecessary red-tape burden is an important element to encourage entrepreneurship, innovation, productivity growth and to ensure that Australian businesses are able to remain internationally competitive.

Yours sincerely,

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