



Regulatory Impact Analysis Benchmarking Study  
Productivity Commission  
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*Western Australian Department of Transport  
Submission in response to Regulatory Impact Analysis: Benchmarking Issues Paper*

The Department of Transport (DoT) welcomes the opportunity to provide feedback to the Productivity Commission on the *Regulatory Impact Analysis: Benchmarking Issues Paper*. The comments provided in this submission supplement information provided to the Productivity Commission at a meeting on 8 March 2012.

DoT's purpose is to provide safe, accessible, sustainable and efficient transport services and systems which promote economic prosperity and enhance the lifestyles of all Western Australians.

DoT began operations in July 2009, after the former Department of Planning and Infrastructure was divided into three new agencies. The transport function is integral to business and commerce and important for social interaction and connecting communities.

Our key focus is on operational transport functions and strategic transport planning and policy across the range of public and commercial transport systems that service Western Australia. With more than 1,000 employees, we have the expertise to deliver and connect a complex, inter-related economic and social network.

We connect people with goods and services through an intricate system of roads, railways, airports, ports and waterways and educate and regulate to keep them safe within those networks. We coordinate and prioritise the transport related infrastructure that allows our economy to grow.

## **Submission**

The submission is in two parts:

1. General observations about the Regulatory Impact Analysis (RIA) process; and
2. Responses to selected questions raised in the *Issues Paper*.

## 1. General observations about the Regulatory Impact Analysis (RIA) process

- Western Australia's (WA) adoption of a formal RIA process is fairly recent in comparison with other Australian jurisdictions. Throughout this transition period, DoT's experience of the RIA process has generally been positive. DoT's interactions with the WA oversight agency have proven beneficial in gaining a clear expectation of the type and level of detail required for the successful completion of the RIA for regulatory proposals. The oversight agency staff have consistently been available to meet in person or provide clarification over the telephone. The WA oversight agency maintains a reasonable lead time for assessing proposals even in instances when Preliminary Impact Assessments (PIA) have been referred to additional parties such as the Small Business Development Corporation for input into the assessment process. DoT has generally found the RIA process to be a helpful guide for considering important broader aspects of any policy proposal.
- WA's two stage regulatory impact assessment process is time consuming and the support documents do not clearly explain the process. In addition, the templates that have been developed in WA are extremely difficult to use.
- The WA oversight agency encourages the preparation of PIA's early in the process and DoT supports this practice. However, the challenge for agencies is in exercising discretion in deciding when to commit resources to a RIA prior to obtaining ministerial mandate to progress with the proposal. Similarly, at times when a minister and/or the Premier directs DoT to undertake a specific course of action, it seems somewhat redundant to seek approval from the oversight agency before proceeding. For example, when a regulatory initiative is required to implement an Intergovernmental Agreement.
- DoT's experience with the COAG RIA process indicates that there is often a substantial lead time from when the Regulatory Impact Statement (RIS) is completed and assessed by the Commonwealth Office of Best Practice Regulation and when the proposal is implemented in WA. During that period, ongoing negotiations and decisions continue to shape the detailed policy which provides greater clarity about the possible stakeholder impacts. When a significant period of time elapses between the RIS and implementation, it may be beneficial for the proposal to undergo a supplementary RIA to provide greater analysis of impacts.
- There have been situations in which the oversight agency has not readily granted an exception for regulatory initiatives that are subject to acceptable Commonwealth based RIA. Likewise, this has also occurred when a regulatory amendment was subject to the budget process. In these types of situations, the oversight agency considerably complicates the process of making essential regulatory amendments.
- The RIA process aims to 'improve regulatory decision making' and the development of 'better quality policy' through the active involvement of key stakeholders. However, it is another formal step in an already lengthy regulatory amendment process. To achieve its intended outcome, the RIA process needs to be understood and accepted by all participants (including the government), stakeholders and the public. The required expertise and time needs to be committed to the process.
- In WA, the oversight body is called the Regulator Gatekeeping Unit. It is considered that this name has negative connotations and implies that the process is a hurdle to be jumped rather than a positive contribution to the development of good policy.

### **3. Responses to selected questions raised in the issues papers**

*What existing information can be used to indicate the impact of RIA processes on decision making and regulatory outcomes?*

Jurisdictional oversight agencies may already maintain a range of useful data sets that could be used to assess the impact of RIA processes on decision making and regulatory outcomes. For example, existing data relating to the number and nature of regulatory proposals that did not proceed or were significantly revised as a result of the RIA process because it was identified that implementing the regulatory proposal would pose a significant negative impact to the community, industry or government. This information could be analysed to identify trends or shifts in the policy development and methodology employed by agencies as a result of the RIA process.

*What specific examples could help illustrate the extent to which RIA has influenced the policy development process and decision making? For example:*

- *over time, evidence that departments and agencies are implementing improved regulatory development processes.*

DoT has no specific examples which illustrate the beneficial impact the RIA process has had on the policy development process. It quite often seems an overtly bureaucratic and somewhat superfluous step in obtaining regulatory amendment. However, it would be useful if agencies were to introduce standardised post implementation review process for proposals that undergo a RIA to assess the impact of the introduction of the proposal. The review process could include an evaluation of measurable indicators such as the number of positive and negative pieces of ministerial correspondence, customer feedback, media interest or industry circulars in relation to the proposal. Over a period of time the results of the post implementation review process could be used to give some indication of whether the agencies are implementing improved regulation as a result of the RIA process.

*How can the cost effectiveness of RIA be improved?*

There are a number of ways that the cost effectiveness of RIA could be improved. Streamlining the WA RIA process could reduce the cost incurred by agencies for undertaking in-house analysis during the preparation and assessment of a RIA. In WA the RIA process is made up of a Preliminary Impact Assessment (PIA) and a two stage Regulatory Impact Statement (RIS): a Consultation RIS; and a Decision RIS. A cost saving could be possible where prior to completing the PIA the agency has identified that the proposal will have a negative impact on business, consumers and/or the economy. The agency could then elect to develop an RIS rather than initially completing a PIA. Currently in this circumstance, the agency is still required to complete a PIA which often requires significant effort and numerous iterations prior to the WA oversight agency providing an. Significant resource and time savings could be achieved by agencies electing to proceed to a full RIS process.

Another way that the effectiveness of RIA can be improved is by making the document templates more user friendly. In WA the current RIA templates have been created as

secure documents which severely restricts editing, searching and navigation functions within the document. Minor adjustments to improve the usability of the templates would reduce the time taken to complete the documentation of the RIA process.

***Are threshold triggers/significance tests for RIA requirements appropriate and are they defined clearly?***

In general, the threshold triggers for RIA requirements in WA are both appropriate and clearly defined. The existing *Regulatory Impact Assessment Guidelines for Western Australia*<sup>1</sup> clearly detail when an RIA is required and which types of regulatory proposals require the completion of an RIA. However, the guidelines do not provide clear advice about at which stage of the policy process the regulatory assessment process should be commenced. Additional clarity about how to identify and assess negative impacts may develop as policy and legislative officers gain more experience developing regulatory impact assessments.

***Are such triggers successful in ensuring RIA processes are appropriately targeted to improve cost effectiveness, while at the same time ensuring all significant proposals are subject to adequate analysis? If not, what changes should be considered?***

The existing triggers encourage consideration of ways to improve cost effectiveness. However, it is worth noting that a proposal's cost effectiveness is only one factor that influences the decision making process and often the preference of the government for a particular approach can override what may be considered to be cost prohibitive factors of the proposal.

***Are oversight bodies consistent in their advice and interpretation with respect to when a RIS is required?***

One area where DoT has experienced a lack of clarity in regard to when an RIS is required is in relation to regulatory proposals that have been endorsed the Council of Australian Governments (COAG) or at a national level and where the proposal has already been subject to a national RIS. Since the introduction of the formal RIA process in WA, the oversight agency's position in relation to the applicability of national RIS's has changed. Initial advice from the WA oversight agency was that where a national RIS had been completed, a WA RIS was not required. Subsequently, the advice was that no RIS is required if the national RIS specifically addresses the WA context. More recently advice has been provided that suggests that there is no need to complete any further impact assessment provided that the WA approach does not vary from the COAG or nationally agreed approach. Further clarification around each stage and what will or will not trigger a state based RIA where a national RIS has been completed would be beneficial for agencies.

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<sup>1</sup> *The Regulatory Impact Assessment Guidelines for Western Australia* are available online from Department of Treasury website:  
[http://www.treasury.wa.gov.au/cms/uploadedFiles/Treasury/Economic\\_reform/Regulatory\\_Gatekeeping/ria\\_guidelines\\_july\\_2010.pdf](http://www.treasury.wa.gov.au/cms/uploadedFiles/Treasury/Economic_reform/Regulatory_Gatekeeping/ria_guidelines_july_2010.pdf)

***Are the processes for granting exceptions and exemptions from RIA appropriate?***

At present the WA oversight agency accepts the completion of a RIS undertaken at a national level in relation to a regulatory proposal driven by COAG or other national bodies in lieu of a WA RIS by granting an exception to the RIA beyond completion of the PIA. However, the WA Regulatory Gatekeeping Unit (RGU) looks for evidence that the specific circumstances of WA stakeholders have been considered. Often the states have minimal control or input over the Commonwealth or nationally led RIS processes and they can be undertaken at a fast pace. However, if the Commonwealth amended its practices to require a more thorough section on specific state and territory impacts (in consultation with the jurisdictions) this could create efficiencies for both the Commonwealth and states, as the implementation of national projects would be less likely to be delayed in jurisdictions that are required to undertake additional RIA by their own oversight agencies. Amendments to the Commonwealth or other national RIS processes could simplify the RIA process in states and territories making the process more time and cost efficient.

***Do agencies responsible for preparing RISs generally have the necessary skills and expertise?***

While the late adoption by WA has undoubtedly contributed to a general lack of understanding and commitment by some agencies to the RIA processes and requirements, it is acknowledged that the benefits to government outweigh the additional effort required to introduce considered reform. Generally, it could be said that WA agencies are still 'coming to terms' with the additional requirements and often the RIA processes have not been built into the planning process due to their current lack of understanding and expertise in the area. For example, the resource impact (administrative cost and time) and the extent to which additional consultation processes are required has not been fully understood and has at times resulted in a significant resource impact and as a result delayed the expected progress of reforms.

An area that could be improved is access to expertise economic modelling support and advice to assist sponsoring agencies derive realistic economic, effectiveness and efficiency benefits. For some proposals, this requires significant economic expertise that is not readily available within agencies and must be sought externally.