

Mr Robert Fitzgerald AM
Commissioner
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear Mr Fitzgerald

REGULATORY IMPACT ANALYSIS BENCHMARKING STUDY

Thank you for the opportunity to make a contribution to the review you are undertaking. The attached table provides responses to questions posed in your issues paper.

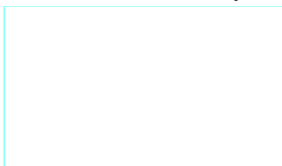
This submission represents the views of officers involved in undertaking RIA as part of the regulatory review and reform work we do in the transport portfolio in Victoria. The views and experiences of relevant officers differ and this is reflected in some of the responses. Rather than trying to reconcile views and perspectives we thought it more beneficial for your purposes to provide insights into the range of views. Importantly, while perspectives may differ the comments made point to common issues and concerns.

The officers most frequently involved in undertaking RIA believe that the type of discipline promoted through RIA requirements is essential to achieving good regulatory outcomes. It is also agreed that RIA should be integrated into review and policy development processes so far as is possible.

Importantly, officers agree that engagement with stakeholders is more successful (and more likely) when the materials made available for the purpose of consultation are more succinct and less technical than what is generally required for RIS. Accordingly, we believe that consideration should be given to reducing some of the requirements applicable to consultation RIS.

Independent scrutiny of RIA is an important element of the existing scheme in Victoria and we generally believe that the level of oversight in Victoria is appropriate. From time to time there are some differences of opinion on what constitutes a proportionate analysis of a particular matter. However, it is recognised and accepted that reaching a view on what is the right level of analysis is an “art” and not a “science”. Accordingly, judgements need to be made and the most that can be hoped for is that parties such as Victorian Efficiency and Competition Commission employ persons that are competent, sufficiently experienced and pragmatic enough to perform the role they must. We do not believe there are any “silver bullet” solutions that remain untested.

Yours sincerely

A rectangular box with a thin red border, used to redact the signature of Paul Salter.

Paul Salter
On behalf of:
“Officers undertaking RIA in the Victorian Transport Portfolio”
17 / 5 / 2012

| Issues Paper Questions | Comments of officers |
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| <p>1. What <u>existing</u> information can be used to indicate the impact of RIA processes on decision making and regulatory outcomes? What <u>additional</u> information could feasibly be collected in the future to improve the evidentiary base on the contribution of RIA?</p> | <p>There is anecdotal evidence of RIA processes improving decision making and regulatory outcomes. This is evidenced in, for example, in proposals incorporated in the Marine Safety Act 2010 in comparison with the range of option considered in the DOT discussion paper "Improving Marine Safety in Victoria" that was released in 2009. However, it is not possible to provide a systematic answer, as the RIA process is integrated with the general policy process in the organisation. This means that this information is not captured, and it is not possible to capture as there is no distinction between a RIA process and a policy process.</p> <p>It is difficult, if not impossible to fully answer the second question, as collecting additional information in the future is limited by the same problem i.e. how to make a distinction between RIA and the policy development process when they integrated.</p> <p>If collecting this information is possible, then the additional information would need to be at a high level and brief as it many result in significant extra work.</p> <p>Possibly the additional information could take the form of a table of three columns, setting out a summary of:</p> <ul style="list-style-type: none"> • the initial proposal or the first outline of the RIA, • the proposal that went to consultation with draft regulations • the final proposal (after consultation on the RIA). <p>Officers also commented that contributions of the RIA can be limited as sometimes, the policy decision has been made before the RIA is undertaken (either through a strategic plan or Ministerial announcement). The RIA process then is viewed as a costly and burdensome "add on" prior to implementation.</p> <p>Comments were made that the RIA process can lead to duplicate costs because the initial research and consultation undertaken in accordance with other internal processes was not recorded or measured sufficiently to meet RIA standards.</p> |

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| <p>2. What specific examples could help illustrate the extent to which RIA has influenced <i>the policy development process and decision making</i>? For example:</p> <ul style="list-style-type: none"> • not proceeding with regulatory action — by demonstrating that a non-regulatory option or the status quo is a better solution to the problem • where regulation is found to be justified — by identifying more effective and efficient design elements that were subsequently built into the regulation • building stakeholder support for proposals — through effective consultation processes and/or by allaying fears of adverse regulatory impacts • altering the objective to be achieved — by raising warning signs and suggesting further analysis and verification • over time, evidence that departments and agencies are implementing improved regulatory development processes. | <p>If the methodology underpinning the RIA framework is integrated early in policy development, regardless of whether a RIA is required or not, then there has been improved regulatory outcomes and stakeholder support in the final regulatory decision.</p> <p>One example is the development of the Owners Corporations Act in Victoria. This Act was developed after a RIS was prepared for sunseting regulations in 2001. There were approximately 400 submissions to that RIS and numerous problems were identified. From that process a Discussion Paper and a Future Directions Paper was prepared by Consumer Affairs Victoria and there was further consultation. At each stage, the outstanding regulatory issues were clarified and refined.</p> <p>From that consultation process, a "Body Corporate Guide" was prepared that set out best practice for managing a body corporate that was settled by all stakeholders. The Body Corporate Guide was then published by the Victoria Law Foundation setting out an operational framework for new possible legislation to enable the "testing" of the regulatory model before the Bill was drafted.</p> <p>Another example was the development of VicRoads Graduated Licensing for Motorcyclists – A Discussion Paper 2010. The Discussion Paper set out options to improve the safety of learner motorcyclists.</p> <p>Attached to the Discussion Paper was a high level preliminary impact assessment setting out the possible cost and impacts of the measures. Submissions identified that the public perception of the problems and solutions and the evidence of the problems and solutions did not necessarily align and that, although there were data limitations, the estimate of costs and impacts were reasonably accurate which helped informed the project.</p> <p>As a general observation, the RIA has only had a significant influence on policy outcomes if the RIA was integrated into policy development and there has been effective consultation.</p> <p>Examples where the RIA process has negatively influenced the policy development process include:</p> |

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| | <ul style="list-style-type: none"> • RIAs that have been prepared after the relevant Government or Minister has announced a policy or the policy is set out in a strategic plan. Stakeholders then form a view that putting effort into preparing a submission is a waste of time because they cannot influence the policy or regulatory outcome. • Sometimes the requirements of RIA can be too onerous (for example data is not available or the time to obtain and cost of data is prohibitive) which then can influence the design and outcome of the regulatory measure. • Distorted or biased regulatory outcome from a RIA process. There is sometimes a poor capacity within an agency to measure/balance/analyse the consultation process where submissions are dominated by a self interested lobby groups resulting in a regulatory outcome that favours one particular stakeholder group. • Low numbers of submissions during consultation that may reduce the quality of the regulatory outcome or design. |
| <p>3. Is there evidence that the quality of regulation has been improving? To what extent are any improvements due to RIA processes? Do differences in RIA systems help explain differences in regulatory outcomes within and across jurisdictions?</p> | <p>In recent times, the Commonwealth/national RIAs for the national rail safety regulator and national maritime safety regulator proposals have not adequately assessed the impacts on a national level and a state level. One exception has been the draft RIA prepared for Fatigue and Risk Management (Hours of work and rest) under the National Rail Safety Law.</p> <p>In addition, the Victorian Competition and Efficiency Commission (VCEC) considered the national RIAs as not meeting Victorian requirements. This has meant that DOT and VicRoads have been forced to prepare its own RIA identifying the impacts specific to Victoria and assessing the actual costs and benefits of both proposals. This analysis can raise doubts in the community about the merit of initiatives agreed by the national body or COAG. DOT and VicRoads have tried to use this information to inform policy choices during the development of these national initiatives.</p> <p>To summarise the view of officers: it is clear in some cases that regulation is improving and the integration of RIA discipline into policy development process has contributed to this. In other cases, the only contribution made by RIA is to inform those involved about how much of a compromise is being made at the expense of good policy.</p> |

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| <p>4. What are some of the key factors that influence the costs of RIS preparation and other costs of RIA processes? How can the cost effectiveness of RIA be improved?</p> | <p>Officers within the transport portfolio made comment that some of the key factors influencing the cost of RIA preparation is the availability of expertise in-house and the time available to complete a RIA.</p> <p>The major costs of meeting RIA standards are the cost of obtaining evidence or data, rework through the policy development and the costs of delay. This is why there is a need to make informed judgements about how much analysis should be undertaken. The level of analysis should be proportionate to the potential scope and nature of costs and benefits at stake. Developing a shared understanding of what proportionate analysis should entail is critical to avoid unnecessary rework and delay.</p> <p>However, rework and delay is unavoidable when RIA is not integrated into the policy development process and instead is prepared at a late stage and has to start from the beginning because the research, consultation and evidence gathered is not evidenced based and not measured. This problem arises routinely when RIA is required on a matter that has been politically determined.</p> <p>A particular area where there may be a need to carefully consider what constitutes "proportionate analysis" is in respect to sunseting regulations. DOT and VicRoads have experienced problems in this area. For example, VicRoads was required to prepare a RIA for the sunseting graduated licensing provisions in the Road Safety (Drivers) Regulations in 2008-2009. The regulation of driver licensing has evolved since 1910 and is common to all jurisdictions. There were significant demands on resources and costs to re-justify the "base case" and the components of the preferred graduated licensing scheme on the whole community over 10 years of the regulations. The problem was also compounded by the cost of obtaining data in a complex system of both manual and computer processes that delivers driver licensing throughout all of Victoria to 3.5million stakeholders.</p> <p>The resources required to justify the regulatory measure diminished the agency's capacity to delivery of its ongoing services.</p> |

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| | <p>In addition, the benefits of graduated driver licensing go beyond the purposes of the regulations (being road safety and to ensure drivers are competent) and include Government revenue (the national scheme enables the licence to be a form of tax) and the licence being a convenient form of identification.</p> <p>Because Victoria is the only jurisdiction that prepares a RIA for graduated driver licensing there was even a greater burden on Victoria to obtain the data. If all the states prepared a RIA on the same issues then the costs of obtaining data could be shared are reduced.</p> |
| <p>5. Are there specific strategies that should be considered to reduce the review costs associated with the prospective large volume of sunseting regulation?</p> | <p>Consideration should be given to remove the requirement to assess sunseting regulations against a zero regulation base case. In some cases, this requirement is too onerous as it is not feasible to collect data associated with no regulations. For example, the requirement to carry lifejackets onboard recreational vessels has been a long standing requirement in Victoria (since the introduction of the Victorian Motor Boating Act 1962). It is very difficult to produce data on the proportion of recreational boaters who would carry a lifejacket without regulations.</p> <p>An alternative model could require a zero regulation base case only if the regulation is identified (through consultation or otherwise) as a problem or not meeting regulatory objectives.</p> <p>Officers made comment that applying sunseting processes to a national agreed regulatory scheme which is also subject to a national review process is anomalous and extremely costly. The cost to change numbers of regulations in department and infringements management data bases as the result of the sunseting driver licensing and vehicle registration regulations was significant. An option would be to make any national based regulatory models subject to different requirements and not subject to automatic sunseting.</p> <p>The costs of RIAs can also be mitigated by establishing a network of policy officers across jurisdictions to share information. This can greatly reduce work and costs for sunseting regulations. This was done in the 1990's when informal networks of agency policy officers were established in common areas of reform. There was open debate</p> |

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| <p>6. What is the appropriate scope of RIA requirements, including in relation to:</p> <ul style="list-style-type: none"> • types of regulatory instrument? • reviews of existing regulation, including sunseting regulation? • government bodies involved in the development and making of regulations? | <p>about the issues and the sharing of information and reduced costs.</p> <p>The initial impact assessment rather than a formal RIA should be extended and used to test strategic plans and Government policy agenda.</p> <p>The former Victorian Government made a deliberate decision to extend the scope of the Subordinate Legislation Act to all forms of subordinate legislative instruments, not just statutory rules. The current Government (when in opposition) supported this change in principle. It remains to be seen whether the support will continue for some of the details of the scheme, which technically require RIA to be prepared in circumstances where it is impracticable. This is why there are quite extensive regulations specifying exemptions from RIA requirements to specific instruments or otherwise specifying certain communication processes (eg gazettal's) as not being subordinate instruments.</p> <p>Each example gives a clear insight into what the Victorian Government believes requires a RIA and what does not.</p> <p>Officers believe that any review of existing regulation and legislation should adopt RIA as part of the policy development process. As indicated, what level of analysis should be undertaken for sunseting regulation is an issue. Specifically, the requirement to re-justify sunseting regulations from a zero base is unnecessary when no one is challenging the need for the regulations.</p> |
| <p>7. Are threshold triggers/significance tests for RIA requirements appropriate and are they defined clearly? 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?</p> | <p>The threshold triggers/significance tests for RIA in Victoria are appropriate. The temptation in the past has been to try and specify triggers that are so matter of fact that it is easy to determine whether a RIA is necessary. However, attempts have tended to result in extreme outcomes ie either everything requires a RIA or only the most significant changes requires a RIA.</p> <p>At a minimum, the current triggers require some examination of potential impacts and some judgements about the size and scope of the potential consequences. If the basic information is not known then it is totally appropriate to implicitly require it to be assessed.</p> |

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| | <p>Experience in the transport portfolio is that reviews of major statutes (or the establishment of new major statutes) are being undertaken over a sufficient time frame to enable all feasible options to be considered. However, for many miscellaneous amendment bills it is not possible to consider the full scope of options because many parameters are fixed.</p> |
| <p>8. Are oversight bodies consistent in their advice and interpretation with respect to when a RIS is required? Should oversight bodies have the final say as to whether a RIS is required in any particular instance?</p> | <p>Officers within the transport portfolio have not experienced any inconsistent advice from oversight bodies. However, there are instances of inconsistent advice from time to time in relation to the level of analysis required.</p> <p>In Victoria, the Minister is ultimately responsible for making a decision that a RIA is required. This arrangement appears to be appropriate and oversight bodies should only have an advisory role into whether proposed regulations or legislation should require a RIA.</p> |
| <p>9. What evidence is there that RIA has been effectively integrated into policy-making processes? Has there been necessary cultural change in regulation development?</p> <ul style="list-style-type: none"> • How and when in the decision making cycle are Ministers, or other decision makers, engaging with RISs? • Is RIA being undertaken early enough in the policy development process to enable consideration of all feasible alternatives, including regulatory and non-regulatory options? • To what extent is the preparation of a RIS still being treated as an 'add on' task — after a course of action has already been agreed? • What have been some of the major challenges in achieving desirable cultural change within agencies? | <p>The RIA process, as mentioned above, has been successfully integrated into the policy-making process. Upon embarking on the Transport Legislation Review (a comprehensive review of legislation administered by DOT), senior executives decided to undertake the review in a manner which complies with the Victorian Guide to Regulation.</p> <p>Some officers provided comment that in some cases, other administrative processes may take precedent in agency decision making and may diminish the capacity of the RIA processes to inform decision making. These processes may include:</p> <ul style="list-style-type: none"> • Prior Ministerial or corporate management approval of the project and funding of project • Risk assessment on the agency • Implementation risk assessment • Environmental Impact assessment • Investment Management Map/Assessment <p>Ministers and other decision makers rarely consider the outcomes of a RIA until they are ready to be released for consultation or when they are provided to inform decision</p> |

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| | <p>making. However, if RIA processes are integrated into regulatory policy development process whenever each milestone is reached RIA outputs are used to inform decisions as needed.</p> <p>Some RIAs are still being prepared after policy decisions and announcements have been made. While this is undesirable, it is still worthwhile undertaking an RIA as the RIA can be used to optimise the details of any scheme even if the range of options under consideration is artificially constrained.</p> <p>The main successes have been in relation to major reviews and new statutes because there has been a legislative review plan set in place for some time and appropriately resourced. When this is in place, pushing cultural values in favour of rigorous RIA has been relatively easy. By contrast, when changes proposed are ad hoc and there are limited 'windows of opportunity' to achieve an outcome it is difficult to get policy development officers to embrace RIA as an essential element of the policy development process.</p> |
| <p>10. How might RIA processes be best refined or streamlined to improve their integration into policy development?</p> | <p>Some officers were concerned that approvals for funding to commence a project may result in a decision on the policy or regulatory outcome of the project. For example, if an approval is required to gain access to or to fund the cost of obtaining data across departments and divisions, then these approvals may result in a sign off on the outcome to not be achieved.</p> <p>Officers provided comment that there may be good arguments for being less stringent about the form of RIA outputs. Significant red tape has evolved in the regulatory design and decision making process and there is a risk that implementation and reporting processes are costing more than the regulatory outcomes desired. RIAs can be intimidating and inaccessible to stakeholders and in certain circumstances less rigour going into consultation may be desirable in maximising engagement whereas the rigour of the analysis and the limitations on analysis need to be made clear to decision makers when decisions are to be made.</p> |
| <p>11. Do agencies responsible for preparing RISs generally have the necessary skills and expertise? If not, why</p> | <p>The transport portfolio employs a number of staff with the relevant and necessary skills to prepare a RIA and indeed have staff who have prepared numerous RIA and</p> |

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| not? | other impact analysis at the state and Commonwealth levels. |
| 12. What arrangements are in place to ensure institutional learning and knowledge transfer (between and within departments), to build on the knowledge/experience gained when completing RISs? | The RIA itself provides the best record of the policy consideration made etc and the learnings obtained. Equally, involvement in the process of RIA by all those involved transfers knowledge about how it is done and why it is important. |
| 13. How can consultants and others with specialist expertise best be utilised to improve the quality of RISs? What are the implications of their involvement for the development of agency capacities and achieving cultural change? | <p>In recent times, most projects within the transport portfolio have only used consultants to:</p> <p>(a) provide specialist services, for example, in relation to sensitivity testing using modelling methods unfamiliar to policy officers; and</p> <p>(b) in circumstances where there is a tense relationship between the Department and stakeholder groups that are likely to be affected. In such circumstance, the independence of the consultants aids in the engagement of stakeholders.</p> |
| 14. How can RIA training and guidance material — both in-house and provided by oversight bodies — be improved? | <p>The Victorian transport portfolio does not have any in-house material in relation to RIA training or processes. In Victoria, officers refer to the Victorian Guide to Regulation (the guidance material prepared by the Victorian Department of Treasury and Finance) for best-practice RIA and to ensure compliance with the Subordinate Legislation Act.</p> <p>The guidance material can be improved by indentifying at more length the real world problems associated with doing RIA and methods for undertaking analysis despite these problems (eg lack of information).</p> |
| 15. What are some of the common weaknesses in RIS analysis and how can the quality of analysis be improved? | Most weaknesses relate to a lack of problem statement and insufficient options analysis. A really good understanding of the problem, backed up by as much evidence as possible, is of paramount importance. |
| 16. Does RIS analysis undertaken for national regulation include an appropriate level of detail on specific impacts in individual states and territories? | RIA analysis undertaken for national regulation does not take into account the impacts in individual states and territories. In Victoria, the RIA process and other regulatory hurdles, such as compliance with the Transport Integration Act, are much more rigorous. There are always added costs for Victoria to implement national requirements that have been agreed by the Standing Council for Transport and Infrastructure (SCOTI), and there is always a risk that the national agreements cannot |

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| | <p>be implement in part or in full.</p> <p>A separate issue is the national RIA processes not providing sufficient time for state agencies to prepare and sign off a submission. It is common for the relevant agency in a state to be given late notice of the RIA process and therefore that agency either has no resources, no permission to consult with stakeholders and no time to prepare a submission for the proposal.</p> <p>See also answer to question 3.</p> |
| <p>17. Are the implications for national markets given adequate consideration when new or amended regulation is proposed and/or proposals to remake sunseting regulation are being considered?</p> | <p>Generally no. There are some limited examples of involving other states in state based reforms (eg VIC involved NSW in marine safety discussions given the obvious overlap at the Murray River). An option may be that when a RIA is prepared in one jurisdiction it should send a copy of the RIA to the relevant agencies and stakeholders in other jurisdictions. That may identify potential impacts. However the amount of time allowed for consultation may be a relevant consideration here also.</p> <p>While RIAs justify changes with high level CBA figures, there is often no requirement to follow up with subsequent evaluation on impacts in each state to see whether these were impacts and outcomes were ever achieved in each state.</p> <p>A lack of common implementation dates for national changes creates greater cross border confusion, which national regulations are designed to overcome! However jurisdictions differ in the business planning processes and may have other priorities for budget, so a common commencement date may be difficult to achieve in practice.</p> <p>There may be instances where the push for not restricting competition drives changes to the lowest common denominator if jurisdictions are forced to lower their requirements to conform to market forces.</p> |

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| <p>18. Where regulation includes a built in requirement for review (for example, sunset clauses), should specific guidance also be provided on the nature of the impact analysis to be undertaken, including evaluation of the case for maintaining the regulation?</p> | <p>Depends on the circumstances.</p> |
| <p>19. Does the requirement that a RIS demonstrate that the recommended option is the one that would generate the 'greatest net benefit' contribute to better regulatory decisions? What is the rationale for the lower 'net benefit' test used in some jurisdictions?</p> | <p>The benefit of the "greatest net benefit" test is that it requires a thorough option analysis. The drawback is that the continuum of options and sub-options is almost infinite and this makes it difficult to draw the line on what constitutes "proportionate analysis".</p> |
| <p>20. To what extent have data constraints been an issue affecting the quality and/or timing of RISs? Has proper use been made of existing information? What efforts have been made to bridge identified data gaps and what other measures could be taken to improve the quality and accessibility of data?</p> | <p>Addressing data gaps is only possible when there is long-term planning. For example, some data gaps in marine safety statistics were addressed following observations about the lack of available data when a major regulatory change was made in 2005/06 (mandatory wear of lifejackets in some circumstances) and there was knowledge that a review of the Marine Act being scheduled as part of the transport legislation review program. As a result, investments were made in a program of work undertaken by the Monash University Accident Research Centre.</p> <p>By contrast, ideas for change that are immature (but are "fashionable" and have a "window of opportunity" for consideration) it is necessary to make do with the information that is available. There may not be sufficient time to invest in new data and actually collect it. This is especially the case given that time series data is so important.</p> <p>The implication is that benefit-cost analysis is not feasible and that analysis is limited to break-even analysis and multi-criteria analysis, backed up as much as possible by quantification of costs and impacts where possible.</p> <p>However, it should be noted that in many cases even when there is relatively good information it is not possible to do an unqualified cost-benefit analysis. For example,</p> |

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| | <p>in most cases it is not possible to predict with confidence what the efficacy of the intervention being considered and so a range of assumptions need to be tested.</p> <p>Some VicRoads officers made comments that economic theory may not appropriate for some social/safety regulations as it is not possible to analyse each component of a regulation in isolation to the complete regulatory framework. There should be some flexibility for other and higher levels of testing impacts with stakeholders without relying on complex theoretical economic analysis that actually excludes or inhibits public consultation.</p> |
| 21. Are there adequate mechanisms in place to ensure accountability and compliance with RIA processes? | Generally yes. If due process is not followed and this is challenged through the use of judicial review, then the making of subordinate instruments can be held to be invalid. |
| 22. How can RIA processes be better insulated from political expediency? How can systems avoid the abandoning or bypassing of RIA processes when there are pressing political demands? | <p>It is not possible. Australia has a democratic system of government and those appointed by the people must have the capacity to make judgements about what should be done irrespective of whether these judgements are informed by RIA or otherwise.</p> <p>The critical issue is transparency. The question is whether an option for change being proposed is based on a thorough examination of the problem and options or is it being proposed because the popular view is that the option will provide a solution.</p> |
| 23. What are the appropriate functions for a regulatory oversight body and which aspects of their operations are the most significant determinants of their effectiveness? Does the degree of independence matter? | <p>Officers within the transport portfolio regard the independence of the oversight body (ie VCEC) as critical to the integrity and success of the process.</p> <p>Examples of appropriate functions for the oversight body are to considered to be:</p> <ul style="list-style-type: none"> • adherence to the processes given by the governing regulations and guidance material; or • scrutiny over the level of analysis in the document and transparency of methodology and data in the document <p>Officers generally believe the level of independence does matter because it is not easy for officers to withstand demands to present some regulatory proposals in the best possible light without noting the necessary qualifications. Having somebody outside of this process that is not subject to the same demands and is able to insist in</p> |

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| <p>24. Are the sanctions for non-compliance with RIA requirements adequate?</p> | <p>transparency is sometimes the only reason why there is a level of transparency.</p> <p>The ultimate sanction for non-compliance with due process is to have instruments made invalid. While this may be an adequate sanction in many cases, sanctions may also have serious safety and economic impacts on businesses and the community. Reasons for non-compliance with RIA requirements may include the lack of resources, costs and capacity to obtain data within or across agencies to meet requirements.</p> <p>Rather than just sanctions there needs to consideration of the impacts on the agency to prepare the RIA and possibly incentives to prepare RIAs.</p> |
| <p>25. Should RIA processes include the power to stop regulatory proposals without an adequate RIS proceeding to the decision maker? If so, should this power be vested in the oversight body or another body?</p> | <p>Refer to answer to Question 22.</p> <p>The power to stop regulatory proposals without an adequate RIA proceeding to the decision maker may cause significant negative impacts on the community and business, if it impedes measures that are urgently required.</p> |
| <p>26. To what extent do agencies conduct reviews of the accuracy of their ex ante RIS estimates? Should such reviews be undertaken routinely?</p> | <p>Both DOT and VicRoads have not undertaken ex-ante reviews of RIA estimates.</p> <p>Such reviews could be undertaken as part of general post-implementation reviews, but in practice these are not undertaken. The key issue is that resources are not made available to such activities. This is despite a broad acknowledgement of the potential benefits.</p> |
| <p>27. To what extent is there independent scrutiny and performance monitoring of RIA processes? Should government auditors or other external bodies conduct assessments of RIA, including the quality of RISs, assessments by oversight bodies and exemptions granted?</p> | <p>In Victoria, robust independent scrutiny and monitoring already exists. This requirement exists in the Victorian Subordinate Legislation Act and the Victorian Guide to Regulation. The VCEC (the independent body) assesses whether a RIS/BIA meets the requirements of the Victorian Guide to Regulation and the Subordinate Legislation Act.</p> <p>Officers with the transport portfolio consider that this current process in Victoria is appropriate.</p> <p>However as mentioned above some officers were of the view that the requirements of</p> |

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| | <p>the Victorian Guide to Regulation may be too onerous and costly which results in the avoidance of the RIA process and diminishes the use of the RIA process as a policy development tool.</p> |
| <p>28. How effective are existing mechanisms for enhancing transparency, such as: consultation processes; publication of draft/final RISs; and publication of compliance information? How can RIA transparency be improved?</p> | <p>Transparency can be improved by ensuring the RIA process (as a public document):</p> <ul style="list-style-type: none"> • does not prevent the reader from understanding and responding to complex analysis; and • ensures the community and stakeholders have adequate time to respond by consulting for longer than the minimum period (ie 28 days). <p>The process of reading and writing submissions on a large document within 28 days in practice may exclude community and industry groups. As a result, only some voices are heard through the RIA process.</p> <p>A different design of the RIA as consultation paper could be used to meet the community's expectation of effective consultation. For example:</p> <ul style="list-style-type: none"> • Stage one: discussion paper with high level costs and benefits, assumptions for validation and confirmation. • Stage two: development of regulations and final formal RIA. Broken into short sharp summaries so they can be downloaded from the internet as and if required. <p>DOT officers has adopted this approach for recent reviews of its major statutes. VicRoads officers support this approach.</p> |
| <p>29. Is consultation and, where relevant, release of the consultation RIS occurring early enough in the policy development process?</p> | <p>In Victoria, agencies are required to consult key stakeholders as part of the preparation of a RIA, and are also required to undertake mandatory consultation of the regulatory proposal for a minimum period of 28 days.</p> <p>Officers agreed that early consultation with key stakeholders allows agencies to 'road test' proposals. In practice, DOT and VicRoads regularly consults with key stakeholders and industry groups in developing proposals.</p> |
| <p>30. Would publication of the oversight body's assessment of the adequacy of each RIS create a stronger incentive for agencies to undertake RIA of</p> | <p>In Victoria, the VCEC recommends that agencies publish their assessment of the adequacy of the RIA alongside the RIA and proposed regulations for public consultation.</p> |

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| an appropriate standard? | |