

The RIA process is fundamentally great but it could be strengthened.

The Regulatory Impact Analysis requirements published by COAG and the OBPR are, in my opinion, two of the most important documents published by Australian governments because they provide solid structure that can best ensure Australia has the best possible and most reasonable regulations, or something other than regulation, as the case may be.

I have used the COAG and OBPR guidelines since 2004, in negotiations and for preparing several major submissions for various legislation proposals.

The RIA/RIS process needs to be made much stronger than it is now and the principles need to be brought to the forefront of regulator thinking, and public thinking, rather than an appendix to a regulatory process.

Briefly, here are my recommendations:

The regulation making guidelines should also be written for the business and general public audience.

The OBPR and COAG regulation making guidelines have government departments as the target audience and that is fine, but COAG and the OBPR ought to also publish their excellent guidelines, reformatted with businesses and the general public as the target audience.

Businesses and the public often provide submission for regulatory proposals and sometimes these submissions are narrowly focused on one's own concerns. Many have valid points but could have much greater impact and balance if they were couched in terms of RIA processes and economics.

Because most in business and the general public are not accustomed to criticising or supporting legislation (they may write a submission once or twice in a decade) many well intended attempts may not be very effective and therefore may get placed on the "ignore" pile. Business and the general public ought to be handed the tools and structures that are obviously intended for them to use for criticising or supporting regulatory proposals, as the case may be. There should in effect be a "how to critique regulation for amateurs" manual so that when and inadequate RIS is prepared the general public can home in on both blatant and subtle non-compliance.

That does not mean to prepare a set of questions, as is sometimes provided with an RIS. A set of questions can be too narrow and may also be designed to steer public opinion and thinking.

The OBPR provide training courses in the RIS process for government departments. Why not also offer those courses to businesses, the general public and in universities? Why not even some You-tube instruction videos?

Australia would get huge bang for education buck if high school curriculums inserted some RIA content in addition to some of the time spent learning about Parliament and democracy.

While the OBPR is surely a professional unit with staff well trained in spotting dodgy RIS, they may at times be under resourced. And it is fair to presume that the OBPR may sometimes have to 'pull their punches' and not be too critical of certain regulatory proposals. So, why not empower many others in business and the public to do a similar job – and do it for free and without political constraint?

Encouraging the broader public to use RIA concepts to comment on and negotiate legislation could be the single most powerful tool to improving the RIA process and legislation quality.

The PC draft report says that many regulators don't like the RIA process and that is understandable. This is because, if properly executed, the RIA process would require would be regulators and prescription junkies to explain their decisions and substantiate their actions. A compliant RIS could make it obvious to all that some things they wanted were bad ideas and it would furthermore help others to attack their position.

At the time of writing, there were only 26 submissions on the PC website and it looks like this could be one of the very few from individuals. That fact speaks volumes: the subject is not adequately publicised and therefore does not gain the interest it deserves.

It looks like some RIS are written after the legislation was already decided

I have seen this several times, but the most recent example is the RIS for the Workplace Health and Safety Regulations. While the draft regulations were published on the department web site on time, the RIS documents were not published until several weeks after the draft legislation.

That's as wrong as a builder starting to build your house before the architect has even finished the drawings and before the local council has approved them.

Furthermore, that RIS was outsourced to Access economics rather than being authored by the department in charge of the legislation.

It also looks bad when consulting firms author an RIS because it gives the impression that the government department in charge does not really know or really care how to use the RIS process. Fair enough if consultants help, but I reckon those departments ought to be made to write and therefore own the RIS themselves, even if only for learning and corporate cultural purposes.

When consultants write an RIS it gives the impression that the government department would rather just get on with just writing the regulations they want

while that pesky RIS is outsourced. It is too easy to presume the consultants brief is to just support the regulations already written rather than create a range of solutions. But, I guess a benefit of outsourcing an RIS is that if something goes wrong, then there is a convenient and paid scapegoat.

When the RIA/RIS process is being used properly, we should expect to see the RIS published well before the regulations, not well after. Furthermore an RIS may need to be published and critiqued several times (and not just twice) before the legislation writing can even begin. This is no different to how an architect should produce drawings of a building and get them reviewed, amended & approved well before the builder starts building it.

And public comment on an RIS should be sought well before draft legislation is published. Seeking public comment on the draft legislation before seeking public comment on the RIS is putting the cart before the horse.

“Regulatory Impact Statement” or “Regulatory Impact Analysis” is a poor choice of terminology.

It’s a poor choice because it does not encourage & remind process users to have the most appropriate attitude to the process. The RIS/RIA process is in reality very much a design process, with many similarities to the design process that engineers and other designers use.

However, the RIS terminology we use tends to imply and support an older regulatory culture; which is based on the premise; “This already determined regulation - will have these impacts.”

The RIA or RIS terminology should be changed so that it reminds us all of the core design ideas of the process. A better name for RIS or RIA would be something like “Regulation *design* analysis” and it might lead to a “Regulation *design* specification” and that would finally lead to a regulation.

The idea that regulations should be designed, somewhat like a piece of machinery is designed, to solve stated problems and to do it in the most economical way, and perhaps in novel and unexpected ways, needs to be re-iterated over and over. Building that ***design*** idea into the process title would help.