Cover image.
Australian Government Productivity Commission logo.
Title: Regulatory Impact Analyis: Benchmarking.
Productivity Commission Research Report.
November 2012.

Commonwealth of Australia 2012

**ISBN 978-1-74037-423-1**

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, the work may be reproduced in whole or in part for study or training purposes, subject to the inclusion of an acknowledgment of the source. Reproduction for commercial use or sale requires prior written permission from the Productivity Commission. Requests and inquiries concerning reproduction and rights should be addressed to Media and Publications (see below).

*This publication is available from the Productivity Commission website at www.pc.gov.au. If you require part or all of this publication in a different format, please contact Media and Publications.*

**Publications Inquiries:**

Media and Publications

Productivity Commission

Locked Bag 2 Collins Street East

Melbourne VIC 8003

Tel: (03) 9653 2244

Fax: (03) 9653 2303  
Email: maps@pc.gov.au

**General Inquiries:**

Tel: (03) 9653 2100 or (02) 6240 3200

**An appropriate citation for this paper is:**

Productivity Commission 2012, *Regulatory Impact Analysis: Benchmarking*, Research Report, Canberra.

JEL code: H8, K20

***The Productivity Commission***

The Productivity Commission is the Australian Government’s independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission’s independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission’s website (www.pc.gov.au) or by contacting Media and Publications on (03) 9653 2244 or email: maps@pc.gov.au

# Foreword

Good public policy — policy that achieves desirable ends in cost-effective ways — demands good policy making processes. By providing a better evidentiary basis for regulatory decision making, including through the testing of alternative approaches and consulting with those affected, regulatory impact analysis seeks to deliver regulations (or other policy solutions) that provide the greatest benefits to the community. The value of regulatory impact analysis processes is accepted by all Australian governments. However, the extent to which these processes have been implemented and embraced has been variable.

This study, part of the Commission’s regulatory benchmarking stream, responds to a request from governments for the Commission to assess the performance of jurisdictions’ regulatory impact analysis processes, including at the level of the Council of Australian Governments (COAG), and to identify leading practices. The report is to inform jurisdictions on ways of improving their systems, drawing on practical examples from other jurisdictions. The study contributes to the ‘regulation making and review’ component of COAG’s *National Partnership Agreement to Deliver a Seamless National Economy*.

The study was overseen by Commissioner Robert Fitzgerald AM and Associate Commissioner Paul Coghlan. They were supported by a team in the Commission’s Canberra office led by Rosalyn Bell. The study benefitted from discussions and submissions from a variety of stakeholders in the government, business and community sectors. It was especially assisted by responses to a detailed survey on experiences with regulatory assessment processes within governments. The Commission is very grateful to all those who contributed to this study.

Gary Banks AO

Chairman

November 2012

Terms of reference

I, Mark Arbib, Assistant Treasurer, under part 3 of the *Productivity Commission Act 1998*, hereby:

The Productivity Commission is requested to undertake a study to benchmark the efficiency and quality of Commonwealth, state and territory and Council of Australian Governments (COAG) Regulatory Impact Analysis (RIA) processes, as at January 2012.

The Commonwealth and each state and territory have well established individual RIA processes to guide decision makers in respective jurisdictions in considering proposals for new or amended regulation, with the broad objectives of ensuring that such regulation is efficient, effective and supports well functioning markets. RIA processes also apply in respect of proposals for new or amended national regulatory initiatives being considered at the COAG level.

A number of initiatives have been pursued through COAG in recent years with a view to identifying opportunities to strengthen jurisdictions’ RIA processes to better meet these objectives. In its 2010 regulatory review *Australia: Towards a Seamless National Economy*, the OECD noted that regulatory management practices in Australia were at or close to international best practice, but that there may be opportunities to strengthen arrangements, particularly so as to ensure that new barriers to doing business nationally are not created.

During 2010, under the auspices of COAG’s Business Regulation and Competition Working Group (BRCWG), jurisdictions assessed their RIA processes against an agreed set of design criteria that were broad ranging but put particular weight on the OECD recommendation regarding the national market implications of regulatory proposals. Following this exercise, jurisdictions agreed to review their RIA processes during 2011 to consider opportunities to enhance current arrangements in five broad areas:

* to ensure implications for national markets are given appropriate consideration when new or amended regulation is proposed and/or proposals to remake sunsetting regulation are being considered;
* the establishment of objective criteria for evaluating proposals to remake sunsetting regulation;
* the publication of Regulation Impact Statements (RISs) or equivalent at or close to the time of policy decision;
* fostering cultural change in regulation making; and
* the use of common commencement dates as a device for reducing the regulatory burden on business.

In undertaking this study, the Commission is to closely examine and assess the efficiency and effectiveness of the key features of the variety of RIA processes that apply across jurisdictions to provide a basis for establishing best practice so that individual jurisdictions can learn from the experience of others and to enable existing processes to be refined where appropriate to maximise their effectiveness. The purpose of the benchmarking study is not to develop a harmonised approach to RIA processes, but to compare processes and identify leading practices, including the practical effectiveness, integration and policy influence of RIA processes with regard to:

* the mechanisms in place to ensure accountability and compliance with RIA processes;
* specific evidence of where the RIA process has resulted in improved regulation;
* how and when in the decision-making cycle Ministers, or other decision makers, engage with RISs; and
* whether there are leading practice examples in RIA that might usefully inform reform consideration by individual jurisdictions.

In assessing the efficiency and quality of both COAG and jurisdictional RIA processes, the Commission should have regard to the following considerations:

* whether RIA processes place appropriate weight on the national market implications of regulatory proposals;
* the extent to which RIA requirements are mandatory;
* the ‘regulatory significance’ threshold, and related thresholds, such as impacts on specific sectors and regions, at which mandatory RIA processes are triggered;
* guidance in regard to consultation processes and other features to enhance transparency such as publication of RISs and the assessment of RIA adequacy;
* whether RIA applies to primary and subordinate legislation, legislative and non‑legislative instruments and quasi-regulation;
* whether RIA requires consideration of competition impacts;
* whether RIA requires consideration of the evaluation and review arrangements following the implementation of proposals, including whether or not policy objectives remain appropriate;
* quality assurance processes, such as the independence and level of seniority for RIS sign-off;
* requirements for consideration of both regulatory and non-regulatory options in RIA processes;
* requirements for regulation that includes sunset clauses to also include guidelines for evaluation of the case for maintaining that regulation; and
* the extent to which the benefits and costs of options are robustly analysed and quantified and included in a cost benefit or other decision-making framework.

The Commission should consult as appropriate. The final report is to be completed within nine months of receiving these terms of reference. The Commission is to provide both a draft and final report, and the reports will be published.

MARK ARBIB  
ASSISTANT TREASURER

[received 28 February 2012]

Contents

Foreword iii

Abbreviations x

Overview 1

1 Introduction 31

1.1 What is regulatory impact analysis? 31

1.2 Recent reviews and changes to RIA processes 34

1.3 The Commission’s study 36

2 Efficiency and effectiveness of regulatory impact analysis 49

2.1 Introduction 50

2.2 How effective are RIA processes? 51

2.3 Costs of RIA 71

2.4 Conclusion 76

Annex RIA practices by jurisdiction 78

3 Institutions involved in regulatory impact analysis 81

3.1 Institutions subject to RIA requirements 82

3.2 Regulatory oversight bodies 89

3.3 Cabinet offices with a formal RIA gatekeeping role 101

3.4 Parliamentary scrutiny committees 103

4 Scope of regulatory impact analysis 105

4.1 Regulation subject to RIA 106

4.2 Trigger for RIS requirements 111

4.3 Who assesses whether a RIS is required? 122

5 Exceptions and exemptions 127

5.1 Introduction 128

5.2 Exceptions to RIA 129

5.3 Exemptions from RIS requirements 141

6 Analytical requirements and impact assessment 149

6.1 The elements of a RIS 150

6.2 Problem identification and objectives 152

6.3 Consideration of options 158

6.4 Assessment of impacts 164

6.5 RIS conclusion and recommended option 178

6.6 Implementation, monitoring and enforcement 181

6.7 Assessing national market implications 185

6.8 Conclusion 194

7 Transparency and consultation 197

7.1 What is transparency and why is it important? 198

7.2 Transparency of regulatory impact analysis undertaken by agencies 199

7.3 Transparency of regulatory oversight body adequacy assessments 222

7.4 Transparency of ministers’ regulatory decisions 230

7.5 Conclusion 235

8 Accountability and quality control 237

8.1 What is accountability? 238

8.2 Are government agencies accountable for the quality of their regulatory impact analysis? 239

8.3 Regulatory oversight body accountability 252

8.4 Executive government accountability 266

8.5 Conclusion 272

9 Regulatory reviews 275

9.1 RIA’s role in promoting integrated regulatory policy 276

9.2 ‘Late RISs’ and post implementation reviews 279

9.3 Reviews and evaluations flagged in RISs or in legislation 288

9.4 Reviews associated with sunsetting requirements 297

9.5 Conclusion 306

10 Improving integration 307

10.1  What is integration? 308

10.2  Jurisdiction progress on integration 311

10.3  Barriers to integration 315

10.4  Better integration of RIA into policy development 321

Appendixes

A Study participants 339

B Jurisdiction guidance material 345

C Best practice principles for RIA 351

D Surveys of agencies and regulatory oversight bodies 355

E Analysis of regulation impact statements 359

References 371

Additional material referred to in the chapters but not reproduced in this report is available on the study website: www.pc.gov.au/projects/study/ria-benchmarking

* RIA agency survey
* RIA agency survey responses
* RIA oversight body survey
* RIA oversight body survey responses

# Abbreviations

AASB Australian Accounting Standards Board

ACCI Australian Chamber of Commerce and Industry

AFGC Australian Food and Grocery Council

AFMA Australian Financial Markets Association

ANAO Australian National Audit Office

ARP Annual Regulatory Plan

BCA Business Council of Australia

BCC Business Cost Calculator

BIA Business Impact Assessment (Vic)

BRCWG Business Regulation and Competition Working Group

BRO Better Regulation Office (NSW)

BRS Better Regulation Statement (NSW)

CAN Compliance Assessment Notice (WA)

CBA Cost benefit analysis

CIE Centre for International Economics

CMPA Construction Materials Processors Association (Vic)

COAG Council of Australian Governments

CRC COAG Reform Council

Cwlth Commonwealth of Australia

DCCEE Department of Climate Change and Energy Efficiency (Cwlth)

DFD Department of Finance and Deregulation (Cwlth)

EC European Commission

ECA European Court of Auditors

ERU Economic Reform Unit (Tas)

FTE Full time equivalent

GBE Government Business Enterprise

IAB Impact Assessment Board (EU)

IAC Industries Assistance Commission

IC Industry Commission

IPAA Institute of Public Administration Australia

IPART Independent Pricing and Regulatory Tribunal (NSW)

LRC Legislative Review Committee (NSW)

MBA Master Builders Australia

MPU Microeconomic Policy Unit (ACT)

NAO National Audit Office (UK)

NSSB National standard setting body

OBPR Office of Best Practice Regulation (Cwlth)

OECD Organisation of Economic Co-operation and Development

OIRA Office of Information and Regulatory Affairs (US)

ORR Office of Regulation Review (Cwlth)

PC Productivity Commission

PCA Property Council of Australia

PIA Preliminary Impact Assessment

PIR Post Implementation Review

QCA Queensland Competition Authority

QOBPR Queensland Office of Best Practice Regulation

RAS Regulatory Assessment Statement (Qld)

RGU Regulatory Gatekeeping Unit (WA)

RIA Regulatory Impact Analysis

RIC Regulation Impact Committee (NT)

RIS Regulation Impact Statement

RIU Regulation Impact Unit (NT)

RPC Regulatory Policy Checklist (Qld)

RPU Regulation Policy Unit (ACT)

RRB Regulatory Review Branch (Qld)

RRC Reducing Regulation Committee (UK)

SARC Scrutiny of Acts and Regulations Committee (Vic)

SBAC Small Business Advisory Committee (Cwlth)

SBDC Small Business Development Corporation (WA)

SBV Small Business Victoria

SLA Subordinate Legislation Act

SLC Subordinate Legislation Committee (Tas)

SNE Seamless National Economy

TPSCSL Tasmanian Parliamentary Standing Committee on Subordinate Legislation

UK RPC Regulatory Policy Committee (UK)

VCEC Victorian Competition and Efficiency Commission