7 Transparency and consultation

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| Key points |
| * Making government policy processes transparent to the public can motivate agencies, regulatory oversight bodies and ministers to comply with agreed regulatory impact analysis (RIA) processes. * The transparency of RIA *consultation processes* in some jurisdictions could be improved by: * releasing a consultation regulation impact statement (RIS) well in advance of the consideration by decision makers of the final RIS, as in COAG, Queensland and Western Australia * reflecting the outcomes from consultation processes in a final RIS provided to decision makers, as in the Commonwealth, COAG, Queensland, Western Australia, South Australia, the ACT and the Northern Territory * providing advanced notice of consultation to interested parties, as in the Commonwealth and Queensland * specifying minimum time periods for consultation in guidance material, as in New South Wales, Victoria, Queensland, South Australia and Tasmania. * The transparency of RIA *reporting processes* in many jurisdictions could be improved by: * developing a central RIS register that is easily accessible by the public on the internet, as in the Commonwealth, COAG, Victoria and the ACT * tabling final RIS documents in parliament with the enabling legislation, as in the Commonwealth and the ACT * removing any discretionary power to not publicly release a final RIS, as in South Australia * publishing final RIS documents at the time of the announcement of the regulatory decision, as in the Commonwealth and COAG. * The transparency of regulatory oversight body RIS adequacy assessments in many jurisdictions could be improved by: * making RIS adequacy criteria explicit in guidance material, as in the Commonwealth, COAG, Western Australia and the Northern Territory * publishing final RIS adequacy assessments at the time of the announcement of the regulatory decision, as in the Commonwealth and COAG * including within the published adequacy assessment the reasons why the regulatory oversight body assessed the RIS as not adequate, or any qualifications where the RIS was assessed as adequate, as in Victoria. * Where a government introduces regulation which has been assessed as non-compliant with RIA requirements, transparency would be improved by requiring the minister responsible to provide a statement to parliament outlining the reasons for the non-compliance and justifying why the proposed regulation is still proceeding. |
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## 7.1 What is transparency and why is it important?

For RIA processes, transparency means the availability of, and ease of access to, information held by government on regulatory policy development and decision making. Transparency also means that government regulatory decisions are clearly articulated, the rationales for these decisions are fully explained, and the evidence on which the decisions are based is publicly accessible (Coglianese et al. 2009).

There are potentially strong incentives for those in government to resist transparency since less transparency provides more scope for action. At its extreme, government corruption is one manifestation of a lack of transparency:

If the people cannot adequately monitor their political agents, or if there is little recourse to punishment, then the agents’ incentives can become misaligned with those of the people. Allowed to act in secret, officials will have a greater incentive for self-dealing at the expense of their principals, the people. (Brito and Perrault 2009, p. 4)

A less extreme, but still costly consequence of a lack of transparency is that governments might simply not perform to their highest potential at the expense of the community’s interests. Transparency can encourage government agencies, regulatory oversight bodies and ministers to comply with government RIA processes. For example, subject to public scrutiny, governments may be more insistent on the need for proposals to be well-considered and analysed before making a decision.

Transparency can also be viewed as an effective means of reducing the ‘information asymmetry’ which is inherent in policy development, whereby stakeholders find it difficult to monitor the regulatory decisions of their governments. Transparency, especially through information provision, can lower the costs to stakeholders of monitoring the implications of individual decisions of governments.

Changes in the nature of society and the relationships between government and the community are also pushing governments towards greater transparency. Better educated and more informed citizens are demanding more information from government and more say in what governments do and how they do it. At the same time, advances in information technology are enhancing governments’ abilities to meet these demands (OECD 2002).

### Transparency as a means of achieving accountability and credibility — and its limitations

Transparency is not an end in itself, but rather a means to achieving the end of accountability and also promoting community support for government policy decisions and credibility in government administration processes. Transparency is usually a precondition for accountability since a government agency, regulatory oversight body or minister cannot be held accountable until information is available on how they have met their respective responsibilities.

At the same time, there is a need to recognise the limits of transparency. Even though transparency allows communities to more easily hold their governments to account, this may still not result in poor regulatory proposals being avoided or withdrawn. Those benefiting from such proposals have every reason to argue and lobby for their implementation while those in the broader community may have little motivation to oppose them — especially where the costs of such proposals are dispersed widely among the community.

Furthermore, in limited circumstances, public transparency may prompt market or community behaviour that undermines the effectiveness of a proposed policy. It may also reduce the information available to facilitate high quality regulatory decision making. For example:

… a commitment to transparency could reduce the likelihood that private firms would voluntarily provide agencies with potentially helpful information, especially if doing so were to mean that agencies must disclose confidential business information obtained from such regulated firms. (Coglianese et al. 2009, p. 929)

In these situations, policy makers need to strike a balance between the primary objective of informing the community about the reasons for the agency’s decision on the one hand, and the protection of confidential information on the other. Confidential consultation processes should only be used in limited circumstances where transparency would clearly compromise the public interest (PC 2010).

## 7.2 Transparency of regulatory impact analysis undertaken by agencies

### The importance of consultation in the policy development process

The primary purpose of most RIA processes is to inform decision makers and stakeholders about the likely impacts of regulatory proposals. The assessment of these impacts requires timely, proportionate and effective consultation with the community prior to the regulatory decision being made. Such consultation makes an essential contribution towards achieving transparency.

The OECD has long acknowledged that public consultation can be a key driver of regulatory quality. The 1995 Recommendation of the Council on improving the quality of government regulation stated:

Consultation and public participation in regulatory decision-making have been found to contribute to regulatory quality by (i) bringing into the discussion the expertise, perspectives, and ideas for alternative actions of those directly affected; (ii) helping regulators to balance opposing interests; (iii) identifying unintended effects and practical problems; (iv) providing a quality check on the administration’s assessment of costs and benefits; and (v) identifying interactions between regulations from various parts of government. Consultation processes can also enhance voluntary compliance, reducing reliance on enforcement and sanctions.

Consultation can be a cost-effective means of responding to other regulatory principles … such as identification of the problem, assessment of need for government action, and selection of the best type of action. (OECD 1995, p. 18)

More recently, on regulatory policy and governance, the OECD recommended that:

Regulatory Impact Analysis should as far as possible be made publicly available along with regulatory proposals. The analysis should be prepared in a suitable form and within adequate time to gain input from stakeholders and assist political decision making. Good practice would involve using the Regulatory Impact Analysis as part of the consultation process. (OECD 2012a, p. 10)

Consultation should occur throughout the policy development process, consistent with the Australian Government and COAG best practice principles (Australian Government 2010a; COAG 2007a). Consultation allows agencies to obtain information that may help them better understand how current regulations could be improved and also how the community or those regulated would respond to a change in policy. Consultation can therefore help policy makers better foresee and appreciate the impact of the decisions they are contemplating.

Still, it is important to recognise that public consultation processes do have some downsides. In particular, consultation can slow or delay policy development:

Increasing public participation requires an agency to expend more resources on filtering through and reading comments submitted. These resources may be well spent to the extent that the additional comments contribute to better policies, but many comments are likely to be duplicative of earlier submissions. (Coglianese et al. 2009, p. 928)

At the same time, consultation processes may not be sufficiently broad, with few small businesses, individuals or community groups having the capacity to devote significant resources to consultation processes (Queensland Consumers Association, sub. DR28; Consumers’ Federation of Australia, sub. DR34). The Commission has also reported in the past, and has noted in studies since, evidence of consultation fatigue:

… with businesses and industry groups stating that they simply couldn’t keep up with the extensive and wide-ranging consultation processes they are requested to participate in. (PC 2009b, p. 221)

Some consumer groups also reported to the Commission that with some regulatory proposals taking many years to develop, stakeholders end up presenting their views on a number of occasions as agency staff change over time. This suggests that agencies need to improve their documentation of previous consultation and put strategies in place to ensure they cope better with staff turnover.

With regulated entities holding much of the data relevant to policy making, governments are increasingly looking to them as a cost-effective source of data. One risk is that data collection through such consultation processes could lead to biased outcomes. According to the officers undertaking RIA in the Victorian transport portfolio:

There is sometimes a poor capacity within an agency to measure/balance/analyse the consultation process where submissions are dominated by self-interested lobby groups resulting in a regulatory outcome that favours one particular stakeholder group. (sub. 17, p. 4)

This risk can be managed by diversifying information and data sources, taking a ‘checks and balances’ approach and by being completely transparent about the sources of data. The more open the consultation process is, the less likely it will lead to biased outcomes (OECD 2008).

Consultation with the wider community should be a key element of any RIA process. Consultation requirements should not be overly prescriptive but they should be sufficiently broad and robust to ensure that consultation informs consideration of a regulatory proposal and its viable alternatives. That is, the consultation needs to be genuine and meaningful, not just conducted for its own sake or used to simply justify or ‘sell’ a pre-determined regulatory proposal.

### RIA consultation processes in jurisdictions

All jurisdictions encourage government agencies to consult during the policy development process with those affected by regulatory proposals. Those jurisdictions with Subordinate Legislation Acts also mandate the form and timing of consultation. Many RIA guidelines also include general information on essential elements for sound consultation, such as:

* a statement of best practice consultation principles (box 7.1)
* a ‘proportionality statement’ — that consultation is commensurate with the potential magnitude of the problem being addressed and the size of the potential impacts of the proposed regulatory or non-regulatory solutions
* a statement that consultation should occur at all stages of the regulatory cycle
* a statement that RIS documents are to be made public (although this still does not occur in practice in some jurisdictions).

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| Box 7.1 COAG best practice consultation principles |
| Continuity — consultation should be a continuous process that starts early in the policy development process.  Targeting — consultation should be widely based to ensure it captures the diversity of stakeholders affected by proposed changes. This includes Commonwealth, State, Territory and local governments, as appropriate.  Appropriate timeliness — consultation should start when policy objectives and options are being identified. Throughout the consultation process, stakeholders should be given sufficient time to provide considered responses.  Accessibility — stakeholder groups should be informed of proposed consultation and be provided with information about proposals, via a range of means appropriate to those groups.  Transparency — Ministerial Councils need to explain clearly the objectives of the consultation process and the regulation policy framework within which consultations will take place and provide feedback on how they have taken consultation responses into consideration.  Consistency and flexibility — consistent consultation procedures can make it easier for stakeholders to participate. However, this must be balanced with the need for consultation arrangements to be designed to suit the circumstances of the particular proposal under consideration.  Evaluation and review — policy agencies should evaluate consultation processes and continue to examine ways of making them more effective. |
| *Source*: COAG (2007a). |
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Some jurisdictions go further in the quality of information they provide in their guidance (table 7.1) by:

* stipulating consultation RIS documents be released well in advance of the consideration by decision makers of final RIS documents
* specifying advance notice of upcoming consultation (such as through government websites or annual regulatory plans)
* indicating a minimum time period for public consultation
* providing transparent adequacy criteria for consultation.

Table 7.1 Consultation information outlined in RIA guidelines

As at January 2012

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Jurisdiction | Cwlth | COAG | NSWa | Vicb | Qld | WA | SA | Tas | ACT | NT |
| Consultation RIS | 🗶 | ✓ | ✓ (🗶) | ✓ (🗶) | ✓ | ✓ | 🗶 | ✓ | 🗶 | 🗶 |
| Final RIS | ✓ | ✓ | 🗶 (✓) | 🗶 (✓) | ✓ | ✓ | ✓ | 🗶 | ✓ | ✓ |
| Consultation and/or Final RIS public | ✓ | ✓ | ✓ (✓) | ✓ (🗶) | ✓c | ✓ | ✓ | ✓ | ✓ | 🗶d |
| Advance notice | ✓ | 🗶 | 🗶 (🗶) | 🗶 (🗶) | ✓ | ✓ | 🗶 | 🗶 | 🗶 | 🗶 |
| Minimum time period | 🗶 | 🗶 | ✓ (✓) | ✓ (🗶) | ✓ | 🗶 | ✓ | ✓ | 🗶 | 🗶 |
| Transparent adequacy criteria | ✓ | ✓ | 🗶 (🗶) | 🗶 (🗶) | 🗶 | ✓ | 🗶 | 🗶 | 🗶 | ✓ |
| Best practice consultation principles | ✓ | ✓ | ✓ (✓) | 🗶 (🗶) | ✓ | ✓ | 🗶 | 🗶 | 🗶 | ✓ |
| Proportionality statement | ✓ | ✓ | ✓ (✓) | 🗶 (✓) | 🗶 | ✓ | ✓ | ✓ | 🗶 | ✓ |
| All stages of regulatory cycle | ✓ | ✓ | ✓ (🗶) | ✓ (🗶) | ✓ | 🗶 | ✓ | 🗶 | 🗶 | 🗶 |

a The symbols in parentheses for New South Wales refer to Better Regulation Statements. b The symbols in parentheses for Victoria refer to Business Impact Assessments. c Even though Qld guidelines state consultation/final RAS documents should be published, in practice only consultation RAS documents have been made public. d Even though NT guidelines state RIS documents should be published, in practice none have ever been made public.

*Sources*: Jurisdictional guidance material (appendix B).

For example, in relation to the transparency of adequacy criteria for consultation, the Australian Government guidance material notes:

The RIS should:

* outline the consultation objective
* describe how consultation was conducted (including when consultation was undertaken, the timeframes given and the method of consultation)
* articulate the views of those consulted, including substantial disagreements
* outline how those views were taken into consideration, and
* if full consultation was not undertaken, provide a reasonable explanation as to why not.

The consultation process reported in the RIS should conform to the government’s best practice principles and policy on consultation. (Australian Government 2010a, p. 18)

The guidance material for RIA processes in COAG, Western Australia and the Northern Territory also explicitly outline consultation criteria. Other jurisdictions are either not explicit on consultation requirements or silent. To improve transparency, adequacy criteria for consultation processes should be made explicit in all jurisdictional RIA guidelines. This issue will be discussed further in section 7.3 in relation to all adequacy criteria, not just those relating to consultation processes.

It should be noted at the outset that there is sometimes a gap between requirements set out in official guidance documents and what happens in practice. These implementation gaps will be identified in the following discussion which compares all Australian jurisdictions and identifies leading practices. Some are drawn from leading practices internationally, where they do not currently exist in Australia.

#### RIS as a consultation document

There appears to be some progress towards using a RIS as the main basis for consulting with interested parties, particularly in state jurisdictions. A consultation RIS can assist in:

* starting a RIA process early in a policy’s development
* testing and refining estimates of impacts of particular options
* identifying and addressing unintended or unanticipated consequences of regulatory proposals
* increasing transparency throughout the RIA process — not just at the end of the process
* increasing acceptance and understanding by interested parties of the final regulatory option chosen.

Table 7.1 shows that six Australian jurisdictions (including COAG) now release a consultation RIS. In most of these jurisdictions the consultation RIS forms the centrepiece of the consultation process and is helpful in identifying further impacts and refining the existing estimates of impacts.

However, this is not the case in all of these jurisdictions. Under the Tasmanian Legislation Review Program (which applies to primary legislation), the consultation RIS is developed after the policy decision is taken by Cabinet. Under the *Subordinate Legislation Act 1992* (Tas), the consultation RIS is developed after the policy decision has been made by the relevant minister. Consequently, the RIS is seen more as a justification for the policy decision already taken, rather than as a tool to inform a policy decision — as the Tasmanian Department of Treasury and Finance commented:

… the formal RIS process may be viewed as a means of setting out the rationale for the proposed policy decision, against viable alternatives. (sub. 22, p. 2)

The Commission understands that for some regulatory proposals, other informal consultation occurs before the preparation of the RIS. However, it is perhaps not surprising that there are typically few submissions received in response to a Tasmanian consultation RIS, or that the consultation RIS does not result in major changes in policy or to the supporting legislation (sub.  22) — since the outcome from the RIS appears to be *fait accompli.*

In Western Australia, the RIA guidelines advise that the Regulatory Gatekeeping Unit (RGU) requires consultation to be assessed as effective and appropriate, which requires agencies (at a minimum) to consult with those stakeholders directly affected by the regulatory proposal. Full public consultation is encouraged, but if the matter is sensitive or it is uneconomical to go out to full public consultation, a RIS may not be available for public consultation (RGU, pers. comm., 24 July 2012).

Depending on the extent to which this release from consultation requirements is taken up in practice, the Western Australian arrangements may be closer to those of the Australian Government RIA process, the Victorian Government business impact assessment (BIA) process, the New South Wales better regulation statement (BRS) process and the South Australian, ACT and Northern Territory RIS processes — which do not require a public consultation RIS.

Strengthening consultation requirements in the Australian Government RIA process via a two-stage RIS has been suggested in recent Commission annual reviews of regulatory burdens on business (PC 2009b, 2010) and initially by the Regulation Taskforce (2006). To reduce procedural length, complexity and potential costs of a two-stage RIS, the Commission suggested:

* removing the need for OBPR adequacy assessment for a consultation RIS (PC 2009b)
* a consultation RIS could initially be implemented only for those regulatory proposals with the largest potential impacts (PC 2010).

Commenting on the lack of a consultation RIS in the Australian Government RIA process the OECD said, ‘Consultation on RIA could be improved if a two-stage approach were taken that required the RIS to be published in a draft format as a consultation document …’ (OECD 2010a, p. 114).

Recently, the European Court of Auditors (ECA), in recommending enhancements to the European Commission Impact Assessment (IA) process, stated that:

Consulting on draft IA reports is useful in ensuring that the analysis is complete, consistent and accurate. In particular, it provides a basis for identifying and quantifying potential costs and benefits, administrative burdens and problems with implementation and enforcement. (ECA 2010, p. 30)

However, the European Commission rejected this recommendation on the basis that it has a range of other documents for consulting with stakeholders (ECA 2010).

Most respondents to the Commission’s RIA survey supported the public release of a draft RIS as a consultation document to improve the RIA process (figure 7.1).

Figure 7.1 Would publishing a draft RIS as a consultation document improve the RIA process?

Number of responsesa

|  |  |
| --- | --- |
| Agencies and departments | Regulatory oversight bodies |
|  |  |

a Based on 60 survey responses by agencies and departments, of which 3 respondents chose ‘do not know’. Responses to the survey of regulatory oversight bodies were received for 8 of the 10 jurisdictions. The OBPR, representing the Commonwealth and COAG jurisdictions, did not provide a response to this question. ‘Agree’ comprises both ‘strongly agree’ and ‘agree’. Disagree comprises both ‘strongly disagree’ and ‘disagree’.

*Data source*: PC RIA Survey (2012).

Support for a consultation RIS, or its incremental or staged release, was also conveyed in some submissions as a way of improving the quality of analysis provided to decision makers and the community (box 7.2).

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| Box 7.2 Support for a consultation RIS or staged approach |
| *Australian Financial Markets Association:*  To address the risk that RIAs are sometimes done after the fact at a time when gaps in reasoning cannot be addressed by relevant industry stakeholders, and the process has progressed too far for fundamental re-thinks to be readily contemplated by agencies, we propose that the RIS publication process be restructured, such that defined stages in the RIS are released with interim departmental sign off incrementally throughout the process …  Incremental release of the RIA would … give assurance to industry that proper process was being followed during what can be a period of little information from the agency. It would allow timely response before the process had progressed too far down the wrong path. (sub. 11, pp. 3-4)  *Chi-X Australia Pty Ltd:*  It is the view of Chi-X that an ex ante cost benefit analysis that is transparently part of the consultation process, should be legislatively mandated for all Australian rule making authorities. The inclusion of the cost benefit analysis at the consultation stage results in at least the following advantageous outcomes:   * the policy proposals consulted on are at a more considered and advanced stage than if no cost benefit analysis had been undertaken, resulting in a more effective use of industry resources and consultation processes generally * there is greater transparency of the rationale for and benefits of the proposals * there is a transparent mechanism of assessing the relative performance of the proposals once they are implemented. (sub. 13, p. 2)   *The Centre for International Economics:*  The main problems the CIE encounters with RISs relates to timing and expectations. One problem is where the RIS is conducted prematurely before any substantive preliminary work has been done … The other problem is when it is conducted too late after considerable policy design effort has been conducted but before any preliminary economic analysis [has been done] … A staged RIA process could help ameliorate the sorts of problems discussed above. Were OBPR (or a state based equivalent) to require steps 1, 2 and 3 [of the RIA process] to be conducted as part of a preliminary RIS for initial review, the opportunity would exist to ensure the rest of the RIS is relevant and appropriate and, importantly, whether it is worth pursuing. (sub. 14, pp. 4-6)  *Officers undertaking RIA in the Victorian transport portfolio:*  A different design of RIA as a consultation paper could be used to meet the community’s expectations of effective consultation. For example:  Stage one: discussion paper with high level costs and benefits, assumptions for validation and confirmation  Stage two: development of regulations and final form RIA. (sub. 17, p. 15)  *Queensland Consumers’ Association:*  A draft RIS for early consultation would be very beneficial for … consumer and community groups. We also believe that in many cases it could be beneficial to have consultation before the preparation of a draft RIS and that there should definitely be consultation if the proposals are changed significantly after consultation on the draft RIS. (sub. DR28, p. 2) |
|  |
|  |

More recently, Borthwick and Milliner (2012) recommended that in all but exceptional circumstances there should be a two-stage RIS for the Australian Government process. In the first stage, Ministers or decision-makers would consider an ‘options stage RIS’ which would set out the problem, objectives and options. In the second stage, following consultation with stakeholders, the ‘details stage RIS’ would include all seven stages, adding elements in relation to impacts, consultation, conclusion/recommendation and implementation/review. In their view:

The two-stage RIS would support best practice regulation in accordance with the spirit of the OECD Principles, but at the same time providing ministers with more flexibility. It would encourage early clarification of the policy problem, objectives/s and possible options. This would enable stakeholder consultation that is specific, but is conducted ex ante the regulatory decision. (p. 73)

While also supporting a two-stage RIS, in the Commission’s assessment a consultation RIS should focus on the first three steps of the RIS (that is, the problem, objectives and options) but *all* seven steps should be undertaken to the best of the agency’s ability (at the time). The latter steps of a consultation RIS would tend to have a lower level of analysis than the earlier steps, because of the nature of what is possible at that point in time. However, they can still provide a useful ‘road map’ for interested parties and provide some insight into the agency’s early thinking on particular options. Moreover, feedback by stakeholders on preliminary estimates of the impacts of particular options can assist the agency to refine the final regulatory proposal for decision makers.

As the Victorian Department of Premier and Cabinet makes clear, it is important that a consultation RIS is as informative as it can possibly be:

Many of the COAG RIA processes have employed a two-stage process with a consultation RIA, followed by a decision RIA. It is important that sufficient detail is provided in the consultation RIA to allow stakeholders to provide informed commentary on the options proposed. Consultation RIAs should also include detailed costing of a range of viable options, including less onerous options, not just the preferred option. (sub. DR32, p. 4)

However, it is recognised that for a minority of proposals a consultation RIS may not be appropriate. Confidentiality may be required in limited circumstances where transparency would clearly compromise the public interest. For example, where there is a need for Cabinet confidentiality, such as for national security or commercial-in-confidence matters, or for proposed tax legislation to deal with tax avoidance. As noted in chapter 5, the reasons for any exemptions from undertaking a consultation RIS should be made explicit.

Borthwick and Milliner (2012) came to similar conclusions when discussing the need for confidentiality in the Australian Government’s RIA process:

The Review does not see that Cabinet deliberations or Budget deliberations are necessarily compromised because they are subject to a RIA Process, which may include consultation before Budget announcement. It is that very consultation that might lead to more informed decisions. It should only be if such consultations risk ‘gaming’ behaviour in the taxation or financial market arena that such processes should be kept confidential. Otherwise, the days of ‘pulling rabbits out of the hat’ through surprise and pre-judged announcements should be long gone. This approach, although often used, is incompatible with the OECD Principles and open government objectives. It does not result in good policy or program implementation and it generally leaves affected stakeholders very aggrieved. (pp. 58-59)

For the majority of proposals, greater transparency, via a mandatory consultation RIS, could improve the quality of analysis used to inform government decisions. At the very least, the regulatory proposal would go forward with a greater understanding and acceptance by stakeholders of its impacts.

##### Consultation outcomes should be reflected in a final RIS as part of a two-stage approach

After incorporating relevant community input, the consultation RIS in some jurisdictions (COAG, Queensland, Western Australia) is developed into a final RIS, and assessed by the relevant oversight body, before being provided to the decision maker. In this way stakeholders in these jurisdictions should be provided with tangible evidence of the extent to which their views were incorporated — if the final RIS is made public.

However, whilst Victoria, New South Wales and Tasmania all undertake a consultation RIS they do not update the RIS to reflect the outcomes from the consultation process. As a consequence, the RIS that is provided to the decision maker in these jurisdictions may contain analysis that is inconsistent with the final regulatory proposal.

To gain insight into why a final regulatory proposal may differ from that put forward in the consultation RIS, additional information must be sought by interested parties from other sources. For example, in Victoria’s case, the *Subordinate Legislation Act 1994* (Vic) requires the responsible Minister to consider all submissions and comments received about a statutory rule or legislative instrument where a RIS has been prepared. As a consequence, agencies must provide reasons for the direction taken in final regulations that broadly address any general issues raised in submissions. This statement of reasons must be published on a government website (Victorian Competition and Efficiency Commission’s (VCEC’s) or that of the responsible agency) and be made available in hard copy format (Victorian Department of Treasury and Finance 2011a). However, in practice such publication does not occur systematically in Victoria (VCEC 2011b).

In the case of New South Wales, the views from interested parties elicited through the RIS consultation process are not made public. Under the *Subordinate Legislation Act 1989* (NSW), in the event that the statutory rule is made, a copy of the RIS and all written comments and submissions received are forwarded to the Legislation Review Committee after the rule is published. There is no set format with respect to how the Committee receives these documents and they are not made public (NSW Legislation Review Committee, pers. comm., 24 May 2012).

The Tasmanian RIS process also suffers from a lack of transparency in consultation outcomes for both primary and subordinate legislation. Unless the agency (at its discretion) decides to publish the submissions, or a document reporting consultation outcomes or reasons setting out changes to the Bill or regulation following consultation, it is difficult for an interested party to gain an understanding of why a policy change has been made (Tasmanian Department of Treasury and Finance, pers. comm., 10 May 2012).

Compared to other jurisdictions (such as COAG and Western Australia) the Victorian, New South Wales and Tasmanian RIS processes lack transparency in reporting consultation outcomes.

The consultation process, articulating the views of those consulted and how those views were taken into consideration should be reported in a final RIS provided to the decision maker (and made public). This would aid transparency because the analysis in the final RIS would be closer to the point when the regulatory decision is made by government. Further, it would better highlight instances where there is a divergence between what was recommended in the final RIS and what the decision maker decided.[[1]](#footnote-1)

A final RIS also eliminates the need for the consultation RIS to be reconciled with supplementary information arising from consultation with interested parties, where such consultation outcomes are made public (as occurs irregularly in Victoria). This enables the final RIS to effectively be a ‘one stop shop’ for understanding how a government made a particular decision.

leading practice 7.1

**Developing a two-stage RIS — an initial consultation RIS and a final RIS — greatly improves the transparency of RIA consultation processes and is regarded as an essential practice to follow.**

#### Publication of RIS documents

Nearly all jurisdictions publish at least some RIS documents, although ease of public accessibility differs markedly. In addition, the public release of an individual RIS is subject to agency/ministerial/Cabinet discretion in some jurisdictions and the timing of the release also varies across jurisdictions (table 7.2). Despite governments improving the public availability of RIS documents across jurisdictions in recent years, there continue to be complaints from industry about their accessibility (see for example, Australian Food and Grocery Council, sub. 5).

##### Where are RIS documents published?

The Commonwealth, COAG, Victoria (but only in respect of a consultation RIS for subordinate legislation) and the ACT lead the way in terms of the public release of RIS documents. They each have a central register of RIS documents available for access by the public. For example, in response to a Commission review of regulatory burdens (PC 2009b), in July 2010 the Office of Best Practice Regulation (OBPR) established an online RIS register. It now publishes both Australian Government and COAG RIS documents on the site as soon as practicable after public announcement of the relevant decision. Such arrangements accord with leading international practice (box 7.3).

The South Australian RIS process also has a central point of access with RISs now published on the Department of the Premier and Cabinet website (SA Cabinet Office, pers. comm., 30 July 2012). However, the site has only recently become operational, hence few RIS documents have been posted. The New South Wales and Western Australian processes are less direct and more haphazard in their publication approach. Although they also have a central point of access, publication is via links to agency websites — that is, they rely on agencies releasing their RIS documents in a timely manner and maintaining links to these documents. In both jurisdictions the Commission found evidence of links to individual RIS documents being broken. Moreover, in both jurisdictions some RIS documents have not been publicly released.

Table 7.2 Location and timing of RIS release in practice

As at January 2012

|  |  |  |  |
| --- | --- | --- | --- |
| Jurisdiction | Where are RISs published? | Is there discretion over publishing? | What is the timing of publishing? |
| Cwlth | OBPR central online public register and tabled in parliament with the enabling legislation | The OBPR obtains the agency’s approval before publishing the RIS | Decision RIS is published on the register as soon as practicable from the date of the regulatory announcement |
| COAG | OBPR central online public register | The OBPR obtains the Ministerial Council’s approval before publishing the RIS | Decision RIS is published on the register as soon as practicable from the date of compliance assessment |
| NSWa | BRO website with links to agency websites | No discretion — consultation RIS must be made public  (The BRS must be made public, except in limited cases determined by Cabinet) | Consultation RIS must be made public before a principal statutory rule is made. (A BRS is published after a Bill is introduced into parliament) |
| Vicb | VCEC and agency websites | No discretion — consultation RIS must be made public  (The BIA is not made public unless agreed between the Premier, Treasurer and responsible Minister — but release has never occurred) | Consultation RIS must be made public before statutory rule or legislative instrument is made. (No public release of BIAs) |
| Qld | Queensland Government’s *Get Involved* website published draft RAS only | Final RAS must be approved for release by Cabinet — but release has never occurred  in practice | No public release of final RAS in practice — in future some may be published by QOBPR subject to Cabinet approval |
| WA | Treasury RGU website with links to agency websites | The RGU will approve the non-publication in circumstances  of sensitivity | Decision RIS must be made available at the time the decision has been made public in its final form — when a Bill is introduced into parliament or regulation is gazetted |
| SA | Economic Development Board’s website or agency website — but now published on the Department of Premier and Cabinet website | There is no discretion over public release | Decision RIS must be published as soon as practicable after the announcement of the regulatory decision |
| Tas | Agency websites | No discretion — consultation RIS must be made public | Whenever agency commences the public consultation process |
| ACT | Online Legislation Register and tabled in parliament for subordinate law or disallowable instrument. No requirement for new or amending legislation | There is no discretion over public release for subordinate law or disallowable instrument. There is discretion for new or amending legislation | RIS presented to the Legislative Assembly with the subordinate law or disallowable instrument |
| NT | Agencies are encouraged to make RISs publicly available — but does not occur in practice | Publication is subject to ministerial approval | No public release of RIS in practice, but if it were to occur it would be once associated regulation has been implemented and commenced |

a The comment in parentheses for New South Wales refers to Better Regulation Statements (BRSs). b The comment in parentheses for Victoria refers to Business Impact Assessments (BIAs).

*Sources*: Jurisdictional guidance material (appendix B).

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| Box 7.3 Central RIS registers are leading international practice |
| United Kingdom  The Department for Business Innovation and Skills has an Impact Assessment Library website to provide easy access to the regulatory impact analysis that the United Kingdom Government has undertaken when introducing new regulations. It enables full access to the evidence base used to justify the need to regulate, including details of the options that were considered and discarded.  European Union  All impact assessments and all opinions of the European Commission’s Impact Assessment Board on their quality are published online once the Commission has adopted the relevant proposal.  New Zealand  The full text of all RIS documents is required to be published, in order to foster openness and transparency around the decision making process. RIS documents must be published by:   * including the URLs to the location of the RIS on the lead agency and Treasury websites, in the press statement announcing any new policy for which a RIS is required * being lodged on the lead agency’s website and the Treasury website * including the URLs to the location of the RIS on the agency and Treasury websites, in the Explanatory Note to Bills that are introduced into the House. |
| *Sources*: UK Government IA Library website; EC Impact Assessment website; NZ Treasury (2009). |
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Whilst Queensland guidance states ‘all final RAS [Regulation Assessment Statement] documents, approved for release, will be published on the Queensland Government’s *Get Involved* website’, only consultation RAS documents have been posted on the website (Queensland Treasury, pers. comm., 14 March 2012). Despite the newly established QOBPR having the authority to publish final RAS documents on its website, it is expected that only those approved for release by Cabinet will in fact be published.

Under the Victorian RIA process for primary legislation, no BIA documents have been publicly released — although VCEC recently recommended that ministers publicly release BIAs (VCEC 2011b) and the Victorian Government is currently considering this request (Victorian Government 2012). Similarly, in the Northern Territory no RIS documents have been publicly released.

Leading practice would suggest that a central RIS register that is easily accessible by the public on the internet be developed within each jurisdiction. While some jurisdictions are making RIS documents more accessible, all RIA websites could be made more user-friendly to encourage greater public participation. For example, jurisdictions could focus on improving their websites by focusing on:

* ease of access and usability (search engines should allow for easy identification and have sufficient data mining capability)
* the quality of data being uploaded
* the timeliness of data entry.

This would allow scope for increased scrutiny of agencies producing regulatory impact analysis and provide them with a greater incentive to undertake better quality analysis. It would also allow regulatory impact analysis to be more easily compared both within and between agencies. This would in turn encourage knowledge transfer, greater consistency in approach to identifying and measuring specific impacts, promoting a more informed understanding of the quality of analysis applied to regulatory proposals across Australian jurisdictions. It would also provide evidence of the value of RIA in policy development and thereby engender support for the process (chapter 10). Most importantly, the transparency derived from improving the general capability and functionality of RIA websites would be more likely to improve regulatory quality.

In the Commonwealth and the ACT (only for subordinate law or disallowable instruments), final RIS documents are also tabled in parliament and can be accessed on parliamentary websites. For example, the Commonwealth final RIS must be attached to the explanatory memorandum for primary legislation and the explanatory statement for tabled subordinate legislation.

It would be beneficial for all jurisdictions that produce a final RIS to table it in parliament with the relevant legislation. This would be more likely to ensure that the RIS associated with the proposed legislation becomes a permanent record. There would be less to gain — and risk of confusion for stakeholders — from tabling a consultation RIS (in isolation) in those jurisdictions that currently do not produce a final RIS (such as Victoria and Tasmania).

##### Is there discretion over public release?

Some jurisdictional RIA requirements allow discretion over whether a RIS is released publicly. The discretionary power can be exercised by government agencies, oversight bodies, Ministerial Councils, Ministers or Cabinets (table 7.2).

Public transparency of jurisdictional RIA processes may be enhanced if discretionary power to not publish a final RIS document were removed. Any information in a final RIS that is commercial-in-confidence or has national security implications could be modified (in consultation with the regulatory oversight body) after the decision maker’s consideration, but prior to publication.

##### What is the timing of public release?

Timing of the public release of the final (or decision) RIS provided to decision makers is important. The sooner the release of the final RIS the greater the level of transparency about RIA quality and the more time the community (and the parliament) has to suggest improvements to the regulatory design that may increase benefits or reduce costs of the final regulation that is made. The Australian Food and Grocery Council submitted that the ‘publication of the final RIS must be required before the regulation is passed’ (sub. 5, p. 17).

If the release of the final RIS occurs at the time of regulatory announcement, or as soon as practicable from the date of regulatory announcement, this would allow the community to be informed about the regulatory impact analysis *before* the legislation is introduced into parliament. If the legislation introduced into parliament differed from that recommended in the final RIS, interested parties would be able to question the government over the reasons for the differences. The government’s explanations for any differences would enhance transparency of the decision making process.[[2]](#footnote-2)

If the release occurs when the legislation is *introduced* into parliament, this would allow members of parliament to be informed by the analysis at the time of parliamentary debate. However, there would be less opportunity for community input and little time for parliamentarians to familiarise themselves with any RIA issues associated with the legislation.

If the release occurs after the legislation has been *passed* through parliament, or later still, been implemented and commenced, community scrutiny of decision making would be further delayed and the ability to improve the final legislation in parliament would be removed altogether. However, even this approach is preferable to the situation where the final RIS is not made public at all — which eliminates all scrutiny of decision making after the fact.

Timing on the public release of the RIS varies significantly between jurisdictions (table 7.2). The Commonwealth, COAG and South Australia (but it has only published two RISs since December 2011) are the jurisdictions which release final RIS documents in the most timely manner, being as soon practicable after the announcement of the regulatory decision. In other jurisdictions, the RIS is released:

* before a regulation is made (NSW RIS, Vic RIS)
* at the time a Bill (WA RIS) or regulation (ACT RIS) is introduced into parliament
* when a regulation is gazetted (WA RIS)
* as soon as practicable after a Bill is introduced into parliament (NSW BRS)
* not at all (Vic BIA, NT RIS, Qld RAS — but some may soon be published by QOBPR on its website, subject to Cabinet approval, as soon as practicable after a final assessment).

All jurisdictions should publish RIS documents in a timely manner. Leading practice would suggest that all final RIS documents should be published at the time of (or as soon as practicable after) the announcement of the regulatory decision.

leading practice 7.2

**Measures that promote the transparency of RIA reporting processes include:**

* **absence of discretionary power as to the public release of a final RIS**
* **an electronic central RIS register that is easily accessible by the public, with publication of final RIS documents at the time of the announcement of the regulatory decision**
* **the tabling of final RIS documents in parliament with the enabling legislation.**

#### Advance notice of consultation

A minority of jurisdictional guidelines encourage agencies to provide advance notice to the community for upcoming consultation activities. However, even where these guidelines are in place, there is little or no monitoring of agency compliance.

The Queensland guidelines advise, ‘where feasible, advance notice is provided to business and community for all upcoming consultation activities via the Queensland Government’s *Get Involved* website …’ (Queensland Treasury 2010, p. 47). At least three months’ notice is recommended prior to consultation taking place and it is the responsibility of individual agencies to fulfil this whole-of-government commitment.

Australian Government RIA guidelines require agencies to publish and maintain an Annual Regulatory Plan (ARP) which includes details about recent and expected changes to regulations affecting business and the wider community. The ARP is required to include a timetable, contact details of a responsible officer and planned consultation opportunities. ARPs are published each July on the agency and OBPR websites, in OBPR’s annual report and linked to the Australian Government Business Consultation website. This website allows users to register to receive notification of new public consultations on government policies and regulations that are posted to the site by government agencies.

Agency updates to ARPs within the financial year are discretionary, with no requirement to include information on whether a RIS is required for a new regulatory proposal (OBPR 2008b). On the other hand, agencies are required to list upcoming post implementation reviews (PIRs) in their ARPs (OBPR 2012b). The Commission has, in the past, suggested that Australian Government ARPs could be improved by making it mandatory for agencies to update their plans to reflect whether or not a RIS will be undertaken for regulatory proposals (PC 2009b).

Commenting on compliance with the Australian Government ARP process, the OECD has noted:

All Commonwealth Departments have complied with the requirements for an ARP however a detailed audit of the extent to which the plans are comprehensive, including feedback on user satisfaction would be beneficial to verify how complete and useful the information contained in the plans is to business and the public. (OECD 2010a, p. 108)

More recently, Borthwick and Milliner (2012) concluded that Australian Government ARPs were not serving their intended purpose of providing business and the community with information about planned regulatory changes and were not making it easier for business to take part in the development of regulation that is likely to affect them. As a consequence, they recommended:

Agencies should ensure that ARPs are timely, complete and informative so that they can be a genuine mechanism for stakeholder awareness and consultation on upcoming regulatory proposals. They should be updated on an as needs basis. OBPR should report annually on compliance with the requirement to prepare adequate ARPs. (Borthwick and Milliner 2012, p. 75)

In Western Australia, a similar approach is taken to the Australian Government. Agencies provide a Biannual Agency Regulatory Report to the RGU to determine agency compliance with RIA for regulatory proposals in the previous six months and also a regulatory plan for the coming six months. The publication of regulatory plans is encouraged by the RGU, but unlike the Australian Government process, it is not mandatory (WA Treasury 2010a). The Small Business Development Corporation (SBDC) indicated that it is yet to see any agencies publish a regulatory plan:

To the best of the SBDC’s knowledge, there has been no take-up by agencies or enforcement by the RGU of this RIA requirement. (sub. 25, p. 9)

The SBDC also supported the establishment of a centralised consultation website in Western Australia to improve transparency of government processes:

… a centralised community consultation website could facilitate greater stakeholder engagement and increase the transparency of Government decision-making. Such a website could provide a list of regulatory proposals that the Government was considering and enable interested parties to input their views. (sub. 25, p. 11)

An innovation on advance notice recently introduced in the European Union is an alert service for upcoming initiatives. Organisations that sign up for the ‘transparency register’ can receive early information on the ‘roadmaps’ for new regulatory initiatives in their fields of interest about one year before their adoption. The European Commission hopes that the new alert service will increase participation in its consultations, from a very early stage of policy development, especially from those groups who up until now have been under-represented, such as small business (EC IAB 2012).

Advance notice of consultation should be encouraged in all jurisdictions. Where annual regulatory plans are undertaken they should be made public and provide useful information to business and the wider community. It should be mandatory for all government agencies to update their annual regulatory plans to reflect whether (or not) a RIS will be undertaken for listed regulatory proposals. As recommended by Borthwick and Milliner (2012), regulatory oversight bodies could report annually on compliance with the requirement to prepare and publish adequate annual regulatory plans.

#### Minimum time period for consultation

Five jurisdictions have minimum time periods for consultation during RIA processes — these range from 21 to 30 days (table 7.3). With the exception of South Australia (and New South Wales for BRSs), jurisdictions that specify minimum time periods consult on a draft RIS document. Having a minimum time period does not prevent longer consultation periods being employed for more significant or complex proposals. For example, in Victoria, a consultation period of at least 60 days is recommended for more complex subordinate legislation proposals (Victorian Department of Treasury and Finance 2011a).

Table 7.3 Minimum time period for consultation

As at January 2012

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| Jurisdiction | Is there a minimum time  period for consultation? | If so, how long is the  time period? |
| Cwlth | No |  |
| COAG | No |  |
| NSW | Yes | 28 days |
| Vica | Yes | 28 days |
| Qld | Yes | 28 days |
| WA | No |  |
| SA | Yes | 30 days |
| Tas | Yes | 21 days |
| ACT | No |  |
| NT | No |  |

a Minimum time period only applies to Victorian RISs not BIAs.

*Sources*: Jurisdictional guidance material (appendix B).

Other jurisdictions, such as the Commonwealth and COAG, do not prescribe the minimum duration of consultation. In the Commonwealth’s case, RIS documents are required to demonstrate that consultation is commensurate with the magnitude of the problem and the size of the potential impacts of the proposal. COAG consultation requirements have a similar ‘proportionality principle’.

In responding to the draft report, the Department of Treasury in Western Australia stated that:

[It] recommends as best practice that agencies conduct a three-month consultation. However, it concedes the prescription of a minimum time period may be insufficient or excessive depending on the nature of the regulatory proposal. (sub. DR37, p. 5)

The Western Australian Local Government Association (sub. 6) recommended that mandatory time periods for consultation be introduced for the Western Australian RIA process. In a similar vein, the Construction Material Processors Association (sub. 9) and officers undertaking RIA in the Victorian transport portfolio (sub. 17) noted that consultation periods in Victoria were too short for stakeholders to respond:

Policy developers must recognise that the required level of analysis takes considerable time and needs substantial input from industry and community affected by the policy. It is unrealistic to require this detailed data to be provided in a response to a RIS within a 4-6 week consultation period. (sub. 9, p. 18)

The process of reading and writing submissions on a large document may exclude community and industry groups. As a result, only some voices are heard through the RIA process. (sub. 17, p. 15)

In international jurisdictions consultation periods are generally longer than those recommended in most Australian jurisdictions. For example, in the United States at least 60 days is provided for significant rules reviewed by the regulatory oversight body, the Office of Information and Regulatory Affairs (OIRA) (Copeland 2009). In the European Union at least 12 weeks is provided for consultation on new European Commission (EC) policies and legislation and the EC’s regulatory oversight body monitors compliance with this requirement (EC IAB 2012). In the United Kingdom, 12-week formal written consultations are encouraged where appropriate, but there is flexibility to have shorter consultations or a more informal approach, particularly where extensive engagement has occurred previously (UK Cabinet Office 2012).

Where governments have decided that a regulatory proposal is of a level of significance that triggers the RIS requirements, it seems reasonable that a minimum time period for consultation — sufficient for interested parties to provide a considered response — should be specified in guidance material.

### What is the evidence on consultation quality?

For most jurisdictions the final RIS document is expected to summarise stakeholder views. From the Commission’s examination of final RIS documents from all jurisdictions the overwhelming majority (93 per cent) outlined the views of those consulted, however in most cases the RIS documents only provided limited detail on consultation comments such as very brief descriptions, selected or highly aggregated views. Further, only one-third of all RIS documents contained an extensive discussion of how views received during consultation were taken into account (figure 7.2). The Commission also received submissions criticising some RIA consultation processes from stakeholders participating in these processes (box 7.4).

Borthwick and Milliner (2012) received similar stakeholder feedback on the Australian Government’s RIA consultation processes:

In short, the Review heard of many instances where consultation practices failed to observe the Consultation Principles and there were inconsistent consultation practices across Government. These failings severely detract from the usefulness of the RIA process and underscore the perception of business and the not-for-profit sector that too often agencies are ‘going through the motions’. (p. 52)

Figure 7.2 Consultation findings in final RISs

Per cent of RISs

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*Data source*: PC RIS analysis (appendix E).

To improve the quality of consultation, Borthwick and Milliner suggested the oversight body should have a role in assessing the adequacy of stakeholder consultation processes — not just RIS documents:

The Review is of the view that OBPR should seek to inform itself on the veracity of consultative processes and, if the best practice guidelines have not been followed comment to that effect to the relevant decision maker and, especially in egregious circumstances, outline the shortcomings in its Best Practice Regulation Report and online. This may be viewed as putting OBPR in a difficult position, but reasonable judgements should be able to be made and reported to both increase transparency around the integrity of the consultation process and also to encourage higher conformity. (Borthwick and Milliner 2012, p. 53)

The Commission, has previously called for a similar extension of the OBPR’s monitoring and reporting role, by publicly reporting on compliance by departments and agencies with the best practice consultation principles (PC 2010). Reporting of such information would provide the community with an indicator of the government’s threshold for quality consultation and also reflect the government’s commitment to its consultation principles.

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| Box 7.4 Criticisms of RIA consultation processes |
| *Association of Mining and Exploration Companies*  AMEC is … concerned with the processes surrounding apparent ‘consultation’, as in many cases governments appear to be only going through the ‘process’, where the decision has clearly already been made. It is also extremely rare to receive any form of feedback from submissions, or clarifications on input or constructive recommendations, until the final exposure draft/explanatory memorandum or policy determinations are publicly released. (sub. DR29, p. 2)  *Construction Material Processors Association:*  Often it appears the ‘consultation’ process is undertaken to merely ‘tick the box’ rather than to gather informed input. This is a dilemma for industry as it on the one hand cannot afford to invest time or resources in responding to the issue while on the other hand it cannot afford to not respond. … often the consultation process is a ‘de facto’ education process for the new regulations rather than seeking meaningful input from industry. In this sense it is used to prepare industry for change. (sub. 9, p. 23)  *Australian Financial Markets Association:*  … some regulatory outcomes … are not consistent with good regulatory practice and are poorly supported by the relevant agency. In these cases the RIA, and in some cases the accompanying consultation processes, show signs of being pro-forma exercises. (sub. 11, p. 2)  *Western Australian Local Government Association:*  The consultation process … of the RIS was limited to two workshops in the eastern states, and while comments were provided by those stakeholders who were able to attend, it was not made clear how these comments were incorporated into the assessment of the problem. Stakeholders were also not provided the opportunity to comment on this aspect of the assessment after this date. (sub. 6, p. 3) |
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## 7.3 Transparency of regulatory oversight body adequacy assessments

One of the core functions of all regulatory oversight bodies in Australia is to examine RIS documents and advise agencies and decision makers (and sometimes the community) whether they meet the government’s RIA requirements (chapter 3). There is a high degree of variability in the transparency of oversight body adequacy assessments. Most jurisdictions do not publish these adequacy assessments or even the criteria which the oversight body draws on for its assessments (table 7.4). However, even where adequacy assessments are published, usually the only information provided is a statement of whether the RIS associated with the regulatory proposal is adequate or not adequate — but no specific reasons or justifications for why the RIS was assessed as not adequate or, where the RIS was assessed as adequate, whether there were any qualifications.

Table 7.4 Transparency of individual RIS adequacy assessments

As at January 2012

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|  | Are there transparent adequacy criteria? | Who makes individual adequacy assessments? | Are individual adequacy  assessments made public?  If so, where and when? |
| Cwlth | Yes | OBPR, Department of Finance and Deregulation | Yes. Central online public register as soon as practicable after regulatory announcement and in  the OBPR annual report. |
| COAG | Yes | OBPR, Department of Finance and Deregulation | Yes. Central online public register as soon as practicable after regulatory announcement and in  the OBPR annual report. |
| NSW | No | BRO, Department of Premier and Cabinet | No |
| Vic | No | VCEC, Department of Treasury and Finance Portfolio | Yes. On VCEC website (and agency website) when Minister releases RIS for consultation and in the VCEC annual report.  Adequacy assessments of individual BIAs are not made public. |
| Qlda | No | Regulatory Review Branch (in consultation with the relevant Business Branch), Department  of Treasury | No — but some may soon be published  by QOBPR on its website subject to Cabinet approval as soon as practicable after a final assessment. |
| WA | Yes | RGU, Department of Treasury | Yes. On RGU website (as a Compliance Assessment Notice)  and agency website at the time the decision is made public in its final  form — when a Bill is introduced into Parliament or regulation is gazetted. |
| SA | No | Cabinet Office, Department of Premier and Cabinet | No |
| Tas | No | Economic Reform Unit, Department of Treasury and Finance | No |
| ACT | No | Regulation Policy Unit, Department of Treasury | No |
| NT | Yes | Regulation Impact Unit, Department of Treasury and Finance and Regulation Impact Committee | No |

a Individual RIS adequacy assessments in Queensland are now undertaken by the QOBPR in the QCA.

*Sources*: Jurisdictional guidance material (appendix B).

Only a minority of jurisdictions explicitly identify the adequacy criteria used by regulatory oversight bodies to assess RIS documents. These jurisdictions include the Commonwealth, COAG, Western Australia and the Northern Territory.

It is difficult for interested parties to know whether adequacy assessments made by oversight bodies are rigorous or to attach much weight to them (where they are made public) if they do not know what criteria such bodies use to make their assessments.

### Reporting on agency compliance with RIA processes

#### Publication of adequacy assessments

Only four out of the ten jurisdictions publish their regulatory oversight body’s adequacy assessments (Commonwealth, COAG, Western Australia and Victoria). Although following the establishment of the QOBPR within the QCA in July 2012, some final adequacy assessments in Queensland — for those RISs approved by Cabinet for public release — may in the future be publicly available on the QCA’s website (QCA 2012).

For the Commonwealth, COAG and Victoria, publication of RIS adequacy is both online and in an annual report; for Western Australia, publication is online only.

The RGU does include RIA compliance information in its annual report to the Western Australian Government, but this is an internal government document and is not for public release (WA Government, sub. 24). The SBDC was critical of this lack of public transparency in compliance reporting:

Without an effective and openly transparent process of reviewing (and ultimately improving) agencies’ adequacy of RIA, it is doubtful that better regulatory outcomes and more meaningfully engaged stakeholders will occur. The SBDC believes that these developments do little to improve RIA at the agency level and further shrouds the Government’s decision-making processes. (sub. 25, p. 9)

VCEC releases its adequacy assessments of RIS documents (‘assessment letters’) on its website (but not its assessments of BIA documents because these are cabinet-in-confidence) at the time the RIS documents are released by the responsible minister for consultation. Up until recently, VCEC’s assessment letters were required to be published onlywhen it assessed that a RIS was not adequate and the minister decided to release the RIS for consultation. For adequate RISs, it was at the discretion of agencies whether the assessment letter was published or not. Two assessment letters were not published in 2010-11 and 2011-12. However, as of March 2012, the Victorian Government agreed that allVCEC assessment letters be published when the RIS is released, in the interests of transparency (Victorian Government 2012). VCEC also reports annually on RIS adequacy in its Annual Report. In addition, the Scrutiny of Acts and Regulations Committee (SARC) reports on compliance of the RIS process with the requirements of the *Subordinate Legislation Act 1994* (Vic).

The Victorian Government is still considering its response to VCEC’s recommendations relating to BIAs, including whether BIAs (and associated VCEC assessment letters) should be published (Victorian Government 2012). Currently, VCEC reports annually on the number of specific Bills introduced into Parliament that were subject to BIAs. This list includes all Bills where a BIA was prepared (irrespective of whether the BIA was assessed as adequate/inadequate), but does not report the BIA assessment for each individual Bill.

In a similar manner to the release of the RIS, the timing of the public reporting of compliance with RIA processes is important. The sooner the release of the regulatory oversight body’s adequacy assessment, at the time of (or closely following) the regulatory announcement, the greater the level of transparency about RIS quality and the more time interested parties (and the parliament) have to suggest refinements to the regulatory design that may increase benefits or reduce costs of the final regulation. In relation to final regulatory proposals, the Commonwealth and COAG currently provide the most timely release of adequacy assessments.

#### Information reported in adequacy assessments and annual compliance reports

The OBPR adequacy assessments for individual Commonwealth and COAG RIS documents state whether a RIS is adequate or non-compliant but they do not extend to the reasons why a RIS is assessed as not adequate or any qualifications where a RIS is assessed as adequate. Where a RIS should have been prepared for a regulatory proposal, but was not, the OBPR reports the proposal as ‘non-compliant’. Compliance information is published by individual agency/ministerial council and by individual proposal in the OBPR’s annual report (OBPR 2011a).

Annual compliance reports produced by the Office of Regulation Review (ORR) (OBPR’s predecessor), on occasion, provided more detailed information on the reasons for non-compliant RIS assessments for individual proposals. For example, in relation to the Aviation Transport Security Amendment Bill 2006, in its 2005-06 annual report, the ORR stated:

The RIS did not provide a convincing case that increased air cargo security on international passenger aircraft provided a net benefit to the community. The RIS did not define the problem adequately, did not provide a rigorous risk analysis, and did not provide sufficient information on costs (including compliance costs) and benefits of the various regulatory options. (PC 2006b, p. 38)

It also appears that the depth of compliance information provided in more recent OBPR annual reports has reduced over time. For example, OBPR annual reports previously presented RIS compliance information by relative significance of regulatory proposal — this no longer occurs. In the foreword to its 2010-11 annual report, the OBPR flagged its intention to reduce even further the depth of information included in its annual reports (OBPR 2011a).

In Western Australia, the RGU’s Compliance Assessment Notice (CAN) generally provides a formulaic set of words that ‘the RGU advises that the RIA Guidelines have been followed, and the Government’s adequacy criteria have been met’. However, in contrast to the OBPR, the RGU has, on occasion, outlined specific reservations with (consultation) RIS documents when releasing its assessments of adequacy.

Victoria is currently the leader amongst Australian jurisdictions in transparently conveying information about RIS adequacy because it is the only jurisdiction that regularly goes beyond a mere statement of adequacy. As set out in its *Commission Conventions*, VCEC uses three broad categories for final letters of advice:

* adequate (a letter with no substantive comments)
* adequate with the letter raising specific issues and/or qualifications about the adequacy of the analysis
* inadequate with the letter raising specific issues about the inadequacies of the analysis.

These categories enable VCEC to adopt an intermediate public position between the two extremes of rating a RIS as adequate or inadequate. The more detailed public commentary on the middle option (by identifying particular issues that need to be clarified) increases the pressure on agencies to respond to specific reservations VCEC has about the RIS, and thereby encourages richer consultation (VCEC 2011b).

In a similar manner to the Victorian approach, following the establishment of the QOBPR within the QCA in July 2012, Queensland is expected to provide four broad categories of formal adequacy advice in the future. Three of the categories are similar to those discussed above. The fourth category of advice will be for those circumstances where the QOBPR concludes that insufficient information has been provided in the RIS for it to form a reasoned view of adequacy (QCA 2012).

Some international regulatory oversight bodies also raise specific issues and/or qualifications with their RIS adequacy assessments. For example, in the European Union, the Impact Assessment Board (IAB) of the European Commission (EC) issues opinions on the quality of all individual draft impact assessments prepared by Commission departments. All EC impact assessments and all IAB opinions are published once the Commission has adopted the relevant proposal (EC IAB 2012).

The United Kingdom’s Regulatory Policy Committee (UK RPC) is also seeking to go further than most Australian jurisdictions in this area (box 7.5), by releasing its opinions on all impact assessments irrespective of adequacy, following final decisions by ministers. Implementing such a proposal would result in the UK RPC undertaking its assessment work in the most transparent manner possible.

In the United States, public transparency of the oversight body’s initial assessment of an agency’s RIS can occur prior to final rulemaking, where it has significant concerns about adequacy. The Office of Information and Regulatory Affairs (OIRA), during the course of its review of a draft regulation, may decide to send a public letter to the agency that returns the rule for reconsideration (known as a ‘return letter’). This may occur if the quality of the agency’s analysis is not adequate, if the regulation is not justified by the analysis, or if the rule is inconsistent with the RIA principles in the Executive Order. The return letter explains why OIRA believes that the draft rule would benefit from further consideration and review by the proponent agency (US Reginfo.gov website). Between 2007 and 2011 OIRA wrote five ‘return letters’ to US federal agencies.

#### Support for publication of compliance information

A number of submissions expressed strong support for publication of the oversight body’s adequacy assessment for each RIS associated with regulatory proposals (Tasmanian Parliamentary Standing Committee on Subordinate Legislation, sub. 3; Attorney-General’s Department, sub. 4; Master Builders Australia, sub. 19; WA Government, sub. 24, attach. 3). The Australian Government Attorney-General’s Department supported publication of adequacy assessment, with caveats:

Publication of the oversight body’s assessment would be likely to foster a stronger incentive for agencies to undertake RIA of an appropriate standard. However, to avoid factual inaccuracies being published, the oversight body should consult with the agency on the terms of the assessment of inadequacy before it is published. This could reduce the need for agencies to pursue unnecessary, costly public responses to assessments of adequacy. (Attorney-General’s Department, sub. 4, p. 7)

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| Box 7.5 United Kingdom Regulatory Policy Committee |
| The Regulatory Policy Committee (UK RPC) was established in 2009 to provide external and independent challenge to the evidence and analysis presented in Impact Assessments (IAs) supporting the development of new regulatory measures proposed by the UK Government. By the end of 2011, the UK RPC had examined in detail and issued opinions on 767 IAs.  The UK RPC’s primary role is to consider for each individual IA whether the costs and benefits have been correctly identified and accurately assessed. From the beginning of 2011, each of the UK RPC’s opinions has been prefaced with a Red (‘not fit for purpose’) or Amber or Green (‘fit for purpose’) rating in order to ensure its views are made clear.  If the UK RPC ‘Red’ flag an IA as ‘not fit for purpose’ it explains why and suggests how to improve the IA. These issues must be addressed before a ‘fit for purpose’ rating can be obtained. If the UK RPC ‘Amber’ flag an IA, this means it has some concerns with the quality of analysis and evidence presented and these issues should be addressed prior to the IA being finalised. On this understanding, it judges the IA to be ‘fit for purpose’. If the UK RPC ‘Green’ flag an IA, this means it has no significant concerns with the quality of analysis and evidence presented and it judges the IA to be ‘fit for purpose’.  The UK RPC reviews all IAs accompanying regulatory proposals submitted to the Reducing Regulation Committee (RRC), which is a Cabinet sub-committee established to take strategic oversight of the UK Government’s regulatory framework. The RRC does not receive new regulatory proposals from departments where the UK RPC has considered the IA is ‘not fit for purpose’; typically such proposals are re-submitted to the UK RPC.  At present, the UK RPC’s opinions are made public only when ministers decide to proceed with a regulatory proposal with an accompanying IA that has been judged ‘not fit for purpose’. The Committee has recently made a recommendation to the UK Government that *all* UK RPC opinions be made public at the same time as the IA, following final decisions by ministers. |
| *Source*: UK Regulatory Policy Committee (2012). |
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Similarly, many agency respondents to the Commission’s RIA survey were supportive of publicly reporting the reasons for the oversight body’s assessment of a RIS — to make the RIA process more efficient and effective. Oversight bodies were also not averse to public reporting of the reasons/qualifications for their adequacy assessments (figure 7.3).

More recently, in relation to the Australian Government’s RIA process, Borthwick and Milliner (2012) suggested that oversight body RIS adequacy assessments be made public:

… if OBPR judges that the RIS is inadequate or that [consultation] processes were deficient, the reasons for it judging that the RIS is non-compliant should be drawn to the attention of the decision-maker and published. (p. 63)

Figure 7.3 Would publishing the reasons for regulatory oversight body RIS adequacy assessments improve the RIA process?

Number of responsesa

|  |  |
| --- | --- |
| Agencies and departments | Regulatory oversight bodies |
|  |  |

a Based on 60 survey responses by agencies and departments, of which 4 respondents chose ‘do not know’. Responses to the survey of regulatory oversight bodies were received for 8 of the 10 jurisdictions. The OBPR, representing the Commonwealth and COAG jurisdictions, did not provide a response to this question. ‘Agree’ comprises both ‘strongly agree’ and ‘agree’. Disagree comprises both ‘strongly disagree’ and ‘disagree’.

*Data source*: PC RIA Survey (2012).

In its recent issues paper for the *Review of the NSW Government’s Regulatory Impact Assessment Arrangements,* the Better Regulation Office (BRO) discussed the value of reporting on compliance:

… it is considered worthwhile to publish additional information about the Better Regulation Office’s assessment of compliance with RIA requirements. It would be inexpensive to expand the information provided in the Office’s Annual Update and the views of stakeholders could then be sought to judge whether publication is useful. The circumstances in which the reasons for approving non-compliant proposals might also be published would need detailed consideration. (BRO 2011, p. 34)

As the BRO highlights, the additional cost of publishing compliance information is likely to be low. This applies to most oversight bodies since they already monitor this information and some already produce annual reports that are internal to government.

With the exception of Victoria, all Australian jurisdictions appear to be falling behind leading practice overseas in the transparency and information content of their adequacy assessments. Regulatory oversight bodies in all jurisdictions should make *all* their RIS adequacy assessments publicly available at the time of the regulatory announcement by decision makers, or closely following such an announcement. Each adequacy assessment should provide an explanation of the reasons why the regulatory oversight body assessed the RIS as not adequate, or any qualifications where the RIS was assessed as adequate.

To enable analysis of compliance within and between agencies on a consistent basis, oversight bodies in all jurisdictions should publicly report on compliance at least annually. These reports should include overall compliance information, compliance by agency and by individual proposal (including reasons why proposals are deemed not adequate or any qualifications where proposals are deemed adequate).

Together, these transparency measures would not only make agencies more accountable for the quality of their RIS documents but it would also make oversight bodies more accountable for the quality of their adequacy assessments.

leading practice 7.3

**Measures that promote the transparency of regulatory oversight body adequacy assessments and annual compliance reporting include:**

* **making RIS adequacy criteria explicit in jurisdictional guidance material**
* **publishing RIS adequacy assessments at the time of the announcement of the regulatory decision, including the reasons why the RIS was assessed as not adequate, or any qualifications where the RIS was assessed as adequate**
* **publicly reporting on RIS compliance annually, including overall compliance results for the jurisdiction, compliance by agency and by proposal.**

## 7.4 Transparency of ministers’ regulatory decisions

### Should ministers explain why proposed regulation departs from RIA requirements?

There appears to be no obligation on ministers in any jurisdiction to explain in a transparent manner why regulatory proposals that depart from RIA requirements — that is, proposals assessed as non-compliant by the oversight body because an adequate RIS was not completed — are continuing to proceed through the regulatory process.

Victoria requires transparency of the reasons why a minister believes the oversight body has made an incorrect adequacy assessment. Specifically, the responsible minister needs to explain to parliament and SARC why they believe the RIA requirements have been met despite the RIS being assessed as not adequate by the oversight body:

Following VCEC’s assessment of the RIS, the responsible minister must issue a certificate under section 10(4) or 12H(4) of the Subordinate Legislation Act certifying that the RIS complies with the requirements of the Act and adequately addresses the likely impacts of the statutory rule or legislative instrument. Where VCEC assessed the RIS as inadequate, the certificate should explain why the minister believes the requirements have been met, notwithstanding VCEC’s assessment of inadequacy. (Victorian Department of Treasury and Finance 2011b, p. 69)

However, this situation has only occurred once in the last five years, and it is unclear in this case whether a certificate was prepared and tabled or how the Victorian Parliament responded.

An approach that potentially provides even more transparency than that of Victoria is under consideration by the New Zealand Government (box 7.6). Under the New Zealand proposal, the responsible minister would be required to explain in a statement to parliament the reasons for the non-compliance and justify why it was nevertheless decided to proceed with the regulatory proposal. The New Zealand Government is yet to make any decisions on how to proceed with this proposed legislation.

In a recent submission to the Committee of Legal Affairs of the European Parliament, the Committee on Industry, Research and Energy called for the European Commission to also adopt a similar process:

[The Committee] considers that the IAB should check all Commission IAs and issue opinions on them; considers that if the Commission, following a critical opinion from the IAB, decides not to make any changes to its proposal, a statement from the Commission explaining this decision should be published with the proposal, as should the IAB’s opinion. (European Parliament 2011, p. 23)

Requiring ministers in Australian jurisdictions to transparently state whether the regulatory proposal they are introducing in parliament was assessed in accordance with RIA requirements (and if not, explaining why it is still proceeding) may be an effective means of increasing transparency and parliamentary scrutiny in the final stages of the policy development process. A number of other benefits of the approach, including the demonstration of political commitment to the RIA process, are raised in chapter 10.

|  |
| --- |
| Box 7.6 New Zealand revised Regulatory Standards Bill |
| Several attempts have been made in New Zealand since the late 1990s to develop a ‘Regulatory Responsibility Bill’ or ‘Regulatory Standards Bill’. Following the signing of the National Party-ACT New Zealand Confidence and Supply Agreement (New Zealand Government 2011) in December 2011, the New Zealand Treasury is currently developing a revised Regulatory Standards Bill.  The revised Regulatory Standards Bill aims to improve the quality of regulation in New Zealand by increasing the transparency of regulation making and the accountability of regulation makers. The key element is a requirement for the responsible minister to enhance disclosure in explanatory notes for Government Bills, Supplementary Order Papers and certain delegated legislation. The revised Bill requires explanatory notes to disclose:   * whether any RISs were prepared to inform the government’s policy decisions that led to the proposed regulation, and, if any statements were prepared, where they may be accessed * whether an independent assessment was made of the quality of analysis and presentation for any of these RISs and, if so, give a brief description of the assessment * whether consultation external to government has occurred and, if so, a description of the form it took.   The rationale for enhanced disclosure in the explanatory notes is that the matters disclosed will increase the attention paid to those matters by legislative decision makers and other interested parties. In turn, this is expected to increase the likelihood that those matters will be addressed in a way consistent with the attributes of good regulation. Under the revised Bill, Ministers would be required to give more explicit consideration to the reasons for the choices made in developing the regulation, since the disclosure of certain choices would require an explanation. |
| *Source*: NZ Treasury, pers. comm., August and October 2012. |
|  |
|  |

The requirement for, and content of, a ministerial statement could be set out in Standing Orders[[3]](#footnote-3) (or by voluntary Cabinet agreement) rather than using legislation to require disclosure from the executive. More specifically, the minister responsible for a Bill or subordinate legislation could be required to provide a brief disclosure on:

* the function, expected effects, and need for the proposed regulation
* the public consultation that occurred on the proposed regulation
* whether a RIS was required for the proposed regulation
* whether the proposed regulation was assessed as compliant/ non-compliant with RIA requirements by the regulatory oversight body
* where the proposed regulation departs from RIA requirements (as identified by the regulatory oversight body), the reasons for those departures and justification for why it is proceeding.

In responding to the Commission’s RIA survey, most government agencies and oversight bodies strongly supported the responsible minister being required to provide reasons for proposing regulations that are inconsistent with RIA requirements (figure 7.4).

Figure 7.4 Would requiring ministers to provide reasons for proposing regulations that are inconsistent with RIA principles improve the RIA process?

Number of responsesa

|  |  |
| --- | --- |
| Agencies and departments | Regulatory oversight bodies |
|  |  |

a Based on 60 survey responses by agencies and departments, of which 5 respondents chose ‘do not know’. Responses to the survey of regulatory oversight bodies were received for 8 of the 10 jurisdictions. The OBPR, representing the Commonwealth and COAG jurisdictions, did not provide a response to this question. ‘Agree’ comprises both ‘strongly agree’ and ‘agree’. Disagree comprises both ‘strongly disagree’ and ‘disagree’.

*Data source*: PC RIA Survey (2012).

When commenting on the Australian Government’s RIA process, Borthwick and Milliner (2012) also suggested that ministers needed to take more ownership of the process by publicly explaining their regulatory decisions:

… the Review is of the opinion it is highly desirable that ministers endorse the RIA process is completed and accept that on occasions they may need to fully explain the basis for their regulatory decision, whether it conforms with or is different to what was proposed in the RIS. If this seemingly low hurdle is an obstacle, it begs the question whether there is, in fact, a ‘real’ Government commitment to take ownership of RIA. (p. 50)

… governments should be capable of explaining the reasons for their decisions and why other options were not pursued. There will hardly ever be unanimity when it comes to difficult or on balance decisions, but the RIS and any subsequent commentary should help put matters in context. (p. 58)

The importance of political commitment to the RIA process was evident from discussions with regulatory oversight bodies and government agencies. Many of those consulted perceived that government commitment was weak and this had contributed to an avoidance of ‘due process’ in certain circumstances, with adverse consequences for RIA’s overall effectiveness. Based on the evidence available of RIA’s influence on regulatory decisions and outcomes (chapter 2), this perception would appear to be well founded.

Whilst acknowledging the overriding prerogative of the parliament to shape the final form of legislation, the Australian Financial Markets Association (AFMA) also indicated that greater pre-vetting of the quality of a RIA process, via a ministerial statement to parliament, would be a good governance measure:

In the event that it is deemed appropriate to proceed with a flawed or qualified RIS, as judged by the oversight authority, the exemption should be taken by the responsible Minister in a formal and standardised process with an explanation to the Parliament accompanying the regulation on why it has been necessary to curtail the process … This requirement would, while recognising the proper relation of Ministerial authority to the regulatory process, impose an additional self-discipline on governments and their Ministers that would raise the importance of full engagement with the RIA process for agencies. (AFMA, sub. 11, p. 3)

Australian jurisdictions could do more to extend the influence of RIA into parliaments. Setting out what RIA information needs to be disclosed and explained by ministers in a statement to parliament would raise the profile of RIA and make ministers more accountable to parliament (and the community) for the regulatory decisions taken by the government. It also means the RIS documents associated with regulatory proposals are likely to get more attention, at least in the drafting process and in scrutiny by parliament. As a further transparency mechanism, parliament scrutiny committees could report on individual ministerial compliance with the parliamentary statement obligations.[[4]](#footnote-4)

leading practice 7.4

**Where a government introduces regulation which has been assessed as non-compliant with RIA requirements, transparency entails that the minister responsible provide a statement to parliament outlining the reasons for the non-compliance and why the proposed regulation is still proceeding.**

## 7.5 Conclusion

Transparency is essential to high quality regulation making, not only for agencies to make informed decisions, but also for the community to understand and participate in the regulation making process. Effective consultation processes are the first step in facilitating transparent decision making.

Consultation processes are often inadequate, with government agencies failing to use consultation as an opportunity to genuinely inform regulatory development. This chapter identifies a number of improvements that could be implemented in all jurisdictions to improve the quality of consultation, including:

* releasing a consultation RIS well in advance of the consideration by decision makers of the final RIS
* reflecting the outcomes from consultation processes in a final RIS provided to decision makers
* providing advanced notice of consultation to interested parties
* specifying minimum time periods for consultation in guidance material.

Transparency is not only required before a regulatory decision is announced (consultation) but also at the time it is announced (reporting). When regulatory decisions are announced by governments, appropriate information needs to be reported to the community.

By ensuring the release of the right information in an accessible manner, the government takes important steps towards realising the benefits of transparency in the rulemaking process. (Coglianese et al. 2009, p. 935)

Transparency of RIA processes in many jurisdictions could be improved by governments adopting the following leading practices:

* developing a central RIS register that is easily accessible by the public on the internet
* tabling final RIS documents in parliament with the enabling legislation
* removing any discretionary power to not publicly release a RIS
* publishing RIS documents at the time of the announcement of the regulatory decision.

Transparent reporting is required not only by agencies, but also by regulatory oversight bodies. In many ways, oversight bodies are the linchpin of the RIA process. Making their decisions transparent is critical if cultural change is to occur for agencies, oversight bodies and decision makers. Stakeholders need to be informed in a timely manner about the adequacy of analysis undertaken for a government’s regulatory proposals.

The transparency of regulatory oversight body assessments of RIS adequacy could be improved in many jurisdictions by implementing the following leading practices:

* making RIS adequacy criteria explicit in guidance material
* publishing RIS adequacy assessments at the time of the announcement of the regulatory decision
* by including within the published adequacy assessment the reasons why the regulatory oversight body assessed the RIS as not adequate, or any qualifications where the RIS was assessed as adequate.

Having RIA processes in place that are focused predominantly on the executive branch of government does not achieve all the potential benefits of such processes. Parliaments need to become more engaged. Parliamentarians should be told explicitly whether regulatory decisions are consistent with RIA requirements when legislation is introduced into parliament. Where regulation has been assessed as non-compliant with RIA requirements, the minister responsible should provide a statement to parliament outlining the reasons for the non-compliance and justifying why the proposed regulation is still proceeding.

RIS documents should not be delivered to the door of executive government to inform decisions and then disappear. RIA processes are less about giving a single answer, and more about framing problems, scoping solutions and uncovering unintended consequences of proposed regulatory measures. A RIS should not fade from the scene once a regulatory decision enters parliament, but should remain an important reference point in political negotiations in the parliament before final decisions are taken. In short, RIA processes should not only better inform executive government decisions; they should also better inform the decisions of Australian parliaments.

1. This may not occur in the Commonwealth as there is scope for RISs to be modified after the decision maker’s consideration, but prior to publication, to include analysis of the option adopted where that option was not considered in the original RIS (Australian Government 2010a). [↑](#footnote-ref-1)
2. May not occur in the Commonwealth as there is scope for RISs to be modified after the decision maker’s consideration, but prior to publication, to include analysis of the option adopted where that option was not considered in the original RIS (Australian Government 2010a). [↑](#footnote-ref-2)
3. Standing Orders are the rules of procedure for the house of parliament and its committees. [↑](#footnote-ref-3)
4. For example, in the Federal Parliament the scrutiny committees could be the Senate Scrutiny of Bills Committee and the Senate Regulations and Ordinances Committee (chapter 8). [↑](#footnote-ref-4)