C Best practice principles for RIA

## C.1 COAG principles

COAG has agreed that all governments will ensure that regulatory processes in their jurisdictions are consistent with the following best practice principles for regulation making:

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
   1. the benefits of the restrictions to the community as a whole outweigh the costs, and
   2. the objectives of the regulation can only be achieved by restricting competition;
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed (COAG, 2007b, p. 4).

All Australian governments also agreed, in the *COAG* *Regulatory Reform Plan* (endorsed by the Business Regulation and Competition Working Group on 30 June 2009), to establish and maintain effective arrangements that maximise the efficiency of new and amended regulation, and avoid unnecessary compliance costs and restrictions on competition, by:

* establishing and maintaining gate keeping mechanisms as part of the decision-making process
* improving the quality of RIA through the use, where appropriate, of cost-benefit analysis
* better measurement of compliance costs from new and amended regulation
* broadening the scope of RIA, where appropriate, to recognise the effect of regulation on individuals, the cumulative burden of regulation, and consideration of alternatives to new regulation
* applying the regulatory reform arrangements to ministerial councils (COAG 2007a, p. 8).

## C.2 OECD principles

The OECD has provided substantial guidance on leading practices in RIA over many years. Most recently, the OECD Council approved the *Recommendation of the OECD Council on Regulatory Policy and Governance* (box C.1). This recommendation gives guiding principles for member countries to initiate RIA processes that are integrated in a policy cycle of regulatory design, enforcement, review and evaluation. Other elements of the broader recommendation that are closely linked to RIA or relevant to best practice regulation making processes include those covering: the importance of high level political commitment; oversight of regulatory policy; coordination across jurisdictions; transparency; consultation; and the application of RIA to reviews of regulation.

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| Box C.1 Recommendation of the OECD Council on Regulatory Policy and Governance**a** |
| The OECD Council on Regulatory Policy and Governance recommends, in regard to RIA, that member countries:  Integrate Regulatory Impact Assessment into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach.   1. Adopt ex ante impact assessment practices that are proportional to the significance of the regulation, and include benefit cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs. (4.1) 2. Ex ante assessment policies should require the identification of a specific policy need, and the objective of the regulation such as the correction of a market failure, or the need to protect citizens’ rights that justifies the use of regulation. (4.2)   (continued next page) |
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| Box C.1 (continued) |
| 1. Ex ante assessment policies should include a consideration of alternative ways of addressing the public policy objectives, including regulatory and non regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered. Ex ante assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards. (4.3) 2. When regulatory proposals would have significant impacts, ex ante assessment of costs, benefits and risks should be quantitative whenever possible. Regulatory costs include direct costs (administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government. Ex ante assessments should, where relevant, provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects. (4.4) 3. 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. (4.5) 4. Ex ante assessment policies should indicate that regulation should seek to enhance, not deter, competition and consumer welfare, and that to the extent that regulations dictated by public interest benefits may affect the competitive process, authorities should explore ways to limit adverse effects and carefully evaluate them against the claimed benefits of the regulation. This includes exploring whether the objectives of the regulation cannot be achieved by other less restrictive means. (4.6) 5. When carrying out an assessment, officials should: (4.7)  * Assess economic, social and environmental impacts (where possible in quantitative and monetized terms), taking into account possible long term and spatial effects; * Evaluate if the adoption of common international instruments will efficiently address the identified policy issues and foster coherence at a global level with minimal disruption to national and international markets; * Evaluate the impact on small to medium sized enterprises and demonstrate how administrative and compliance costs are minimised.  1. RIA should be supported with clear policies, training programmes, guidance and quality control mechanisms for data collection and use. It should be integrated early in the processes for the development of policy and supported within agencies and at the centre of government. (4.8) |
| Source: OECD (2012a). |
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a Section four of the OECD Recommendation. The numbers in brackets are the reference numbers from the source document.