E Analysis of regulation impact statements

This appendix discusses the results and methodology of the Commission’s analysis of regulation impact statements (RISs). A list of the questions used to analyse each RIS is provided in the last section of the appendix along with aggregated results.

## E.1 Coverage and methodology

### Coverage

The Commission examined 182 RISs prepared in all Australian jurisdictions to identify the extent to which key analytical features were present (table E.1). All RISs examined have been assessed as meeting the requirements of the relevant jurisdictional RIA process by the relevant oversight body (in jurisdictions where formal assessment takes place).

Included in the analysis were all RISs completed and made publicly available in each jurisdiction (with the exception of the Commonwealth) in 2010 and 2011. For the Commonwealth, only RISs prepared in 2011 were examined, due to the large number of RISs undertaken.

Table E.1 RISs analysed by jurisdiction

1 January 2010 to 31 December 2011

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Cwlth | COAG | NSW | Vic | Qld | WA | SA | Tas | ACT | NT | **Total** |
| Number of RISs | 66 | 24 | 40 | 24 | 6 | 3 | 2 | 7 | 7 | 3 | **182** |

To improve comparability across jurisdictions, consultation RISs for jurisdictions with two-stage RIS processes were excluded from the analysis. Hence, only the final RISs for COAG, Western Australia, and Queensland were included. However, for New South Wales, Victoria and Tasmania, the analysis includes consultation RISs as this was the final document produced in the RIA process. That is, the analysis in the RIS was not updated to include consultation outcomes before it was given to decision makers.

All the RISs examined are publicly available, with the exception of three RISs for the Northern Territory — which were made available to the Commission during the course of the study. Hence, the analysis excludes RISs for primary legislation for those jurisdictions where these are not made public — namely BIAs in Victoria, some BRSs in New South Wales, final RASs in Queensland and most RISs for primary legislation in the ACT.

RISs covered a wide range of subject areas — including the environment and energy, transport, primary industries, legal and financial, health and building (figure E.1). The RISs examined also covered a number of different types of regulatory instruments — including both new and amending bills and regulations as well as some quasi regulation. A number of RISs for the remaking of regulations subject to sunsetting or staged repeal were also examined, however by far the largest category of instruments was amending regulation (figure E.2).

Figure E.1 RISs examined by area of regulation

Number of RISs

|  |
| --- |
|  |

a ‘Other’ comprises a mix of mainly social regulation. Examples include regulations affecting the not-for-profit sector, childcare centres, caravan parks, student visas, protection of exhibited animals and research using animals.

*Data source*: PC RIS analysis.

Figure E.2 Type of regulatory instruments in examined RISs

Number of instancesa

|  |
| --- |
|  |

a Some RISs covered more than one category.

*Data source*: PC RIS analysis.

RISs also varied substantially in terms of the significance of the issues examined, ranging from regulatory proposals with highly significant and widespread economic impacts to those with less significant (though still appreciable) impacts and/or narrower impacts.

### Methodology

As far as possible, objective indicators of the presence (or absence) in RISs of selected analytical features were used. The indicators chosen were drawn from criteria developed by Hahn and Dudley (2007) and various other studies, including Renda (2006), NAO (2010a), Cecot et al. (2008), Ellig and Mclaughlin (2010) and the European Court of Auditors (2010).

The indicators used in this study provide descriptive information on the broad characteristics and coverage of the RISs examined. The indicators cover key elements of RIA including:

1. *Problem identification* — including the discussion of why government intervention was required and whether aspects of the problem were quantified (table E.2)
2. *options* — including the number and breadth of options (including non‑regulatory options) considered
3. *impact analysis* — including the types of impacts assessed, extent to which significant costs and benefits were quantified and monetised, whether costs and benefits were directly compared through calculation of a net benefit and whether discount rates and sensitivity analysis were used
4. *consultation* — including how consultation was conducted, the extent to which views of those consulted were reflected in RISs, and how stakeholder views were taken into account
5. *implementation and review* — including information on how the proposal was to be implemented, enforced and monitored, use of risk-based approaches to design and enforcement, details on ex post review timing and governance arrangements
6. *other* — including RIS length and whether an executive summary was included.

Broadly speaking the methodology can be characterised as a ‘RIS content analysis’ or ‘scorecard’ approach. No attempt was made to systematically measure or verify the accuracy or appropriateness of the analysis (including assumptions, methodologies and calculations) present in RISs. To do so would have replicated key elements of the work of the regulatory oversight bodies. The greater time that would be required to assess each RIS in that way, and the substantial information requirements needed to do it well, would have meant a substantial reduction in the overall number of RISs that could be examined for this study.

While the indicators were selected to be as objective as possible, a degree of subjectivity in the analysis was sometimes unavoidable. In some cases, determining the presence or absence of an element was a simple ‘yes/no’ decision (such as whether a net benefit was calculated or a discount rate used). However, in other cases such results were supplemented with additional information on the comprehensiveness of the analysis. In these cases, judgements had to be made on the *extent* to which particular analytical features were present (table E.2).

To assist in making such judgements as consistently as possible across the full set of RISs examined, and to keep the levels of subjectivity within acceptable bounds, the Commission employed a series of categories to reflect the different levels of content in RISs. For example, in assessing the extent to which costs were quantified, the Commission made assessments as to whether analysis present in RISs involved:

* 1. a solely qualitative discussion
  2. very basic quantification
  3. quantification of some aspects, but with gaps
  4. extensive quantification for most/all aspects

Further, in assessing the discussion of the intervention rationale in RISs, determining whether a discussion was present or absent was generally a straightforward ‘yes/no’ decision. However, in many cases the discussion was a brief or cursory statement noting the presence of a market or government failure or other systemic issue the regulation was supposed to solve. In a number of instances the existence of ‘spillovers’, ‘externalities’, ‘information problems’ or ‘regulatory failures’ were asserted, with little or no supporting argument (see chapter 6). Hence, further delineation in this category was needed. In these instances the RISs were recorded as including a ‘limited discussion of the intervention logic’, to distinguish them from RISs that included a more thorough analysis.

### Factors affecting jurisdictional results

Where results were presented by jurisdiction (chapter 6) the categories presented were, Total, Commonwealth, COAG, New South Wales, Victoria and Other — the latter comprising the remaining jursidictions with insufficient numbers of RISs to enable meaningful analysis at an individual jurisdictional level.

Care is needed in interpreting observed differences across jurisdictions, particularly in drawing inferences based on single indicators. A range of factors can influence jurisdictional results, including:

* *differences in RIS requirements and significance thresholds* across jurisdictions — jurisdictional RIA systems that result in a larger number of RISs for less significant issues will tend to score lower on some aspects of content analysis
* the *magnitude of the impacts* of the regulatory proposals in the benchmark period — jurisdictions with a higher proportion of highly significant RISs (which could vary substantially from year-to-year) will, if analysis is proportionate to likely impacts, tend to score higher for a number of aspects of RIS content
* the *type of regulation/area of the economy* to which the RISs in the benchmark period relate — which can influence the availability of reliable data. For example, RISs in transport and other ‘hard’ infrastructure related areas often have higher levels of quantification and monetisation than RISs for environmental or social regulation, reflecting, at least in part, the more extensive quantitative analysis required for the associated large investments.

Further, the extent to which the number and complexity of RISs prepared during the benchmark period for each jurisdiction may have a bearing on RIS quality is unknown. The amount of new regulation produced within each jurisdiction will vary from year to year depending on a range of factors including reform priorities, regulatory and electoral cycles and the operation of staged repeal and sunsetting arrangements.

It is unclear to what extent these factors influenced the results of the content analysis. The limited number of RISs available meant that standardising for these factors across jurisdictions was not possible. However, to reduce problems associated with inter-jurisdictional differences in RIA requirements, the analytical features examined in the Commission’s RIS analysis were generally based on high level OECD principles for leading practice RIA and COAG‑agreed best practice principles, rather than individual RIA requirements in particular jurisdictions.

A limitation of the approach adopted is that a RIS could score well in terms of comprehensiveness of content, yet still be of poor quality. Nevertheless, given that many of the indicators relate to fundamental RIA elements, RISs with few of the analytical features in the content analysis are unlikely to be of high quality.

## E.2 Other studies of RIS content and quality

Publicly available systematic ex post assessments of RIS content and quality have been limited in Australia. Regulatory oversight bodies generally undertake extensive assessment of RISs as part of the process leading up to decision making and publication of the RIS. However, while some publish information on RIS adequacy and compliance rates, they do not generally publish systematic data on the content and quality of RISs. Nevertheless, a few studies have been made public and are summarised below.

* Data on overall RIS quality is published each year by the Victorian Competition and Efficiency Commission. The latest analysis examined all Victorian RISs produced over the period from 2007‑08 to 2011‑12 (VCEC 2012). Criteria employed included the extent of quantification of the magnitude of the problem, predicted costs and predicted benefits. The criteria used were ‘solely qualitative’ (that is, no quantification), ‘some quantification, but with obvious gaps’, ‘comprehensive quantification of most aspects using available data’, ‘rigorous quantification of all aspects supported by robust data’. This analysis found that total RISs with some quantification of the extent of the problem ranged from 70‑85 per cent; for quantification of predicted costs it was higher (around 90 per cent) and quantification of predicted benefits was around 70‑80 per cent.
* In its assessment of the effectiveness of the RIS process in Victoria, Access Economics (2010) examined RISs to verify their rigour. A sample of 10 RIS documents was provided by VCEC from which Access Economics selected five. The overall finding was that while the RIS documents assessed generally satisfied Victoria’s RIS requirements key areas of improvement included:
* more widespread consideration of non-regulatory options
* greater efforts at improving accessibility of documents (through greater use of plain language) would improve their usefulness in consultation
* better structuring of documents would help stakeholders to identify conceptual and practical shortcomings in the policy proposals.
* *CRA International* (2006) examined a sample of 32 RISs prepared by Commonwealth departments relating to regulatory proposals in 2004-05. Key findings included:
* 77 per cent of RISs in the sample did not attempt to quantify the costs of regulation and compliance costs were rarely quantified
* there was frequent use of vague language in RISs when discussing costs and benefits
* around one-third of RISs in the sample did not analyse policy alternatives
* overall RIS quality was poor, with some RISs using outdated data, poor and/or unrealistic assumptions, biased formulation of costs and benefits and a lack of standardisation and consistency in the presentation of costs and benefits in RISs across government departments.

### International studies

A large number of overseas studies of impact assessments have been conducted, particularly in recent years. Mostly these have been based on a scorecard approach, but some more in-depth qualitative assessments and comparisons of ex post and ex ante assessments have also been published. Examples of studies include:

#### United Kingdom

* The National Audit Office in the UK reviewed a randomly selected sample of 50 of the 196 final Impact Assessments for new legislation in 2008-09 (NAO 2010a).
* An assessment of 499 RIAs undertaken between 1998 and 2002 and 167 in 2002‑03 — by the British Chamber of Commerce (see Ambler, Chittendend, and Shamutkova 2003 and Ambler, Chittendend, and Obodovski 2004).

#### European Union

* Analysis of the first 70 Extended Impact Assessments (IAs) completed by the European Commission — Renda (2006), using a scorecard approach.
* An examination of 111 EU IAs — Cecot et al. (2008) scored the assessments using a number of objective measures of quality.
* ‘Systematic research’ on over one quarter of all 2003-2008 EU IA reports by the European Court of Auditors (2010).

#### United States

* Study of 48 proposed federal regulations subject to RIA between 1996 and 1999 and subsequently 55 cases of RIA performed by federal agencies — Hahn and Litan (2000) and Hahn and Dudley (2004).
* 74 RIAs issued by the US EPA between 1982 and 1999 — Hahn and Dudley (2007).
* Several recent studies have attempted to measure the quality of US analysis in more detail — Ellig and McLaughlin (2010), from the Mercatus Centre, for example, go beyond the ‘yes/no’ scorecard analysis to include a qualitative evaluation of how well the RIA performed for regulations from all agencies in 2008.
* Various assessments that compare ex ante benefits and costs in RIA with actual ex post estimates — Harrington et al. (2000); OMB (2005) and Harrington (2006).

#### Summary of findings

Based on the Commission’s review of the findings of many of these studies, a number of observations can be made that are broadly consistent with the findings of the Commission’s RIS analysis and other studies of RISs in Australia.

There is a wide variation in the standard of RISs but, overall, RIS quality has been found to be low. Generally the analysis has fallen short of the relevant guidelines or requirements, with important components of RISs frequently missing. Common deficiencies include:

* inadequate evaluation of alternatives (including the option of not regulating)
* the level of quantification and monetisation of costs and benefits — business compliance costs are often not quantified and benefits are quantified less frequently than costs
* costs and benefits are seldom directly compared (net benefits are not usually estimated).

Some studies revealed no significant differences in quality over time (eg Hahn and Dudley 2007 (USA)) or even suggested impact analysis may be getting worse (for example, Hahn 2010 (USA) and Renda 2006 (EU)), but more recent studies of EU IAs found evidence of improvements (Renda (2010), Cecot et al. (2008)).

On a more positive note, overall a review of ex ante/ex post comparisons does not seem to reveal any clear or systematic biases in RIS estimates of benefits relative to costs (see, for example, Hahn (2010) and Morgenstern (2011)).

## E.3 Questions and aggregate results

Key questions and the aggregated results are provided in table E.2.

Table E.2 RIS content analysis   
— questions and aggregate results by indicator

|  |  |  |  |
| --- | --- | --- | --- |
| Question | Answer | per cent | |
| 1. **Problem** |  |  | |
| Was the extent of the problem quantified? | |  | |
|  | No, solely qualitative discussion | 27 | |
|  | Very basic quantification | 29 | |
|  | Quantification of some aspects, but with gaps | 32 | |
|  | Extensive quantification of most or all aspects | 12 | |
| Did the RIS discuss why government intervention was required? | |  | |
|  | No discussion | 7 | |
|  | Yes, but limited discussion of intervention logic | 41 | |
|  | Yes, more extensive discussion | 53 | |
| 1. **Options** |  |  | |
| Was a ‘no action’ option explicitly considered? (or for sunsetting: allowing regulation to lapse) | | |  |
|  | No discussion | 31 | |
|  | Yes, but limited discussion or quickly dismissed | 27 | |
|  | Yes, more extensive discussion | 41 | |
| Were non-regulatory alternatives considered? | |  | |
|  | No discussion | 51 | |
|  | Yes, but limited discussion or quickly dismissed | 18 | |
|  | Yes, more extensive discussion | 31 | |
| Was more than one option presented (excluding ‘do nothing’)? | |  | |
|  | No | 32 | |
|  | Yes | 39 | |
|  | Yes, but essentially variations of the same option | 29 | |

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Table E.2 RIS content analysis   
— questions and aggregate results by indicator (continued)

|  |  |  |
| --- | --- | --- |
| Question | Answer | per cent |
| 1. **Impact analysis (costs and benefits)** | |  |
| Did the RIS contain *any* discussion of the following impacts? | |  |
| … impacts on key stakeholder groups | | 97 |
| … national market implications | | 38 |
| … restrictions on competition | | 42 |
| … social impacts | | 61 |
| … environmental impacts | | 37 |
| … small business impacts | | 35 |
| … regional impacts | | 28 |
| Did the RIS include … | |  |
| … quantification of predicted costs? | |  |
|  | No, solely qualitative discussion | 27 |
|  | Very basic quantification | 19 |
|  | Quantification of some aspects, but with gaps | 36 |
|  | Extensive quantification for most/all aspects | 18 |
| … monetisation of predicted costs? | |  |
|  | No, solely qualitative discussion | 30 |
|  | Very basic monetisation | 18 |
|  | Monetisation of some aspects, but with gaps | 35 |
|  | Extensive monetisation for most/all aspects | 17 |
| … quantification of predicted benefits? | |  |
|  | No, solely qualitative discussion | 42 |
|  | Very basic quantification | 18 |
|  | Quantification of some aspects, but with gaps | 30 |
|  | Extensive quantification for most/all aspects | 10 |
| … monetisation of predicted benefits? | |  |
|  | No, solely qualitative discussion | 47 |
|  | Very basic monetisation | 18 |
|  | Monetisation of some aspects, but with gaps | 26 |
|  | Extensive monetisation for most/all aspects | 9 |
| … quantified administrative and compliance costs for business? | |  |
|  | No, solely qualitative discussion | 34 |
|  | Very basic quantification | 17 |
|  | Quantification of some aspects, but with gaps | 34 |
|  | Extensive quantification for most/all aspects | 15 |
| Did the RIS calculate a net benefit? | |  |
|  | For all options or preferred option | 27 |
| Did the RIS use sensitivity analysis? | |  |
|  | Yes | 16 |
| Did the RIS use a discount rate? | |  |
|  | Yes | 31 |
| Was multi-criteria analysis used? | |  |
|  | Yes | 13 |

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Table E.2 RIS content analysis   
— questions and aggregate results by indicator (continued)

|  |  |  |
| --- | --- | --- |
| Question | Answer | per cent |
| 1. **Consultation**a | |  |
| Did the RIS outline the views of those consulted? | |  |
|  | No | 7 |
|  | Yes, limited detail | 50 |
|  | Yes, more extensive discussion | 43 |
| Did the RIS outline how these views were taken into account? | |  |
|  | No | 29 |
|  | Yes, limited detail | 38 |
|  | Yes, more extensive discussion | 33 |
| Was there evidence that outcomes and responses of public consultation in some way influenced the preferred option? | |  |
|  | Yes | 57 |
| 1. **Implementation and review** | |  |
| Did the RIS include information about how the proposal was to be implemented and enforced? | | |
|  | No | 25 |
|  | Yes, limited detail | 48 |
|  | Yes, more extensive discussion | 27 |
| Did the RIS discuss potential non-compliance? (ie incidence, likely impacts etc) | |  |
|  | No | 67 |
|  | Yes, limited detail | 17 |
|  | Yes, more extensive discussion | 16 |
| Did the RIS include any estimates of monitoring or enforcement costs? | |  |
|  | Yes | 34 |
| Was there evidence of a risk-based approach to the design and enforcement of the regulatory compliance strategy? | |  |
|  | Yes | 27 |
| Did the proposed regulation include a review clause (embedded statutory review)? | |  |
|  | Yes | 5 |
| Did the RIS contain an explicit statement of … | |  |
|  | ... when a review of the regulation would occur? | 42 |
|  | ... who would undertake the review? | 10 |
|  | … that the review would be public? | 5 |
|  | … that the review would be independent? | 4 |
| Did the RIS state the regulation would include a sunset clause? | |  |
|  | Yes | 1 |
| 1. **Other** | |  |
| Did the RIS have an executive summary? | |  |
|  | Yes | 41 |
| How long was the RIS? | |  |
|  | Average length, including attachments (pages) | 54 |

a These estimates exclude consultation RISs and are based on data from the following jurisdictions: Commonwealth, COAG, NSW (BRSs, but not RISs), Western Australia, South Australia and the Northern Territory.