Regulatory Impact Analysis: Australia’s experience

Rosalyn Bell
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Ten RIA processes in Australia

Australia (Federal) Govt (1985)

Western Australia (2009)
Northern Territory (2003)
Queensland (1990)
South Australia (2003)
New South Wales (1989)
Victoria (1985)
Australian Capital Territory (2000)
Tasmania (1995)
2012 Productivity Commission study

- Benchmark RIA processes of 10 Australian jurisdictions
- Focus on
  - identifying leading practices
  - the practical effectiveness & efficiency of RIA processes
- Consulted widely
  - 88 stakeholder meetings; 36 submissions
- Considered leading practices overseas
- Surveyed all oversight bodies & around 100 agencies which use RIA
- Assessed content of large number of recent published RISs
Stylised schematic of the RIA process

1. **Trigger**
   - policy issue, idea, challenge or crisis

2. **Definition**
   - Identify problem, objectives and policy context – establish case for government action

3. **Analysis**
   - Identify all options – regulatory and non-regulatory. Can objectives be achieved by means other than regulation?
   - Assess impacts of all options considered – costs, benefits and distributional effects including appropriate quantification
   - Design final proposal – including development of enforcement, monitoring/data-gathering and evaluation mechanisms
   - Independent assessment of RIS adequacy

4. **Assessment**
   - Government policy decision drawing on RIA analysis

5. **Informed decision making**
   - RIS published – regulatory oversight body assessment may also be made public

6. **Transparency**
   - Implementation of policy

7. **Implementation and review**
   - Ex post monitoring and evaluation of effectiveness and efficiency (Do realised impacts accord with the RIS? Are revisions needed?)

8. **Consultation with stakeholders**
   - should take place throughout the policy development process from problem identification to implementation and review

9. **Revise or rescind as required**
In a nutshell, what did we find?

- In some cases, RIA has led to
  - more thorough analysis of policy problem
  - more systematic consideration of costs and benefits
  - better policy decisions
- Despite little concrete evidence of its benefits, widespread agreement that RIA process is worth keeping
- But...
  - RIA is not delivering on its potential
  - Gap between ‘required’ approach and practice
  - RIA has generally not been effectively integrated into decision making
  - RIA is often not influential where it needs to be – for the most significant proposals
RISs are not done where they are most needed
... based on data from Australian Govt RIA process

Number of proposals

- Exempted
- Non-compliant
- Compliant RIS

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<tr>
<th>Year</th>
<th>Highly significant proposals</th>
<th>Other less significant proposals</th>
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<tbody>
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And even where RISs are done,

- RIS is often started too late to influence outcomes
- Often no serious consideration of feasible alternatives
- Failure to fully assess costs and benefits of proposals
- Limited involvement of, and/or feedback to, stakeholders
- Limited consideration of implementation or enforcement of proposal
Thorough discussion of intervention rational lacking in many RISs

% of RISs

- No discussion: 7
- Limited discussion: 41
- More extensive discussion: 53
Often no serious consideration of feasible alternatives

- Did not consider more than one option: 32%
- More than one option - but essentially all variations of same option: 29%
- Considered more than one distinct option: 39%
Consideration of impacts in RISs

Impacts on key stakeholder groups

- Social: 61%
- Competition: 42%
- National markets: 38%
- Environmental: 37%
- Small business: 35%
- Regional: 28%

% of RISs
Failure to fully assess costs and benefits

Per cent (of RISs)

- Nil, or very basic, quantification
  - Costs: 47%
  - Benefits: 60%

- Quantification of some aspects, but with gaps
  - Costs: 36%
  - Benefits: 30%

- Extensive quantification for most/all aspects
  - Costs: 18%
  - Benefits: 10%
Agency perspective: What are the main barriers to using RIA to better inform policy development?

- Lack of data
- Policy already decided by minister
- Administratively burdensome
- RIA not flexible
- Minister needs to respond quickly
- Lack of in-house skills
- RIA is irrelevant
- Lack of support from senior management
- Lack of support from minister
What key lessons did we learn about how to improve Australia’s RIA processes?

- Strong political commitment essential
- Exemptions must be limited
- Need sanctions for RIA non-compliance
- Targeting of RIA resources for efficiency
- Transparency and accountability
Political commitment is crucial

• Lack of political commitment, evidenced by:
  • exemptions to RIA processes for significant proposals that are not ‘urgent’ in nature
  • ministers putting substantial proposals to Cabinet which do not meet RIA requirements
  • RISs done after decisions have already been made/announced

• Without political commitment, agencies lack incentive to comply with RIA requirements
Tighten up on non-compliance & exemptions

- Restrict granting of exemptions
  - only in exceptional circumstances
  - by head of government
  - not after a RIS has commenced

- Minister should provide statement to parliament outlining the reasons for regulation proceeding

- Post implementation reviews (PIRs) for proposals with highly significant impacts
  - undertaken by an independent third party
  - be funded by the agency responsible for the non-compliant regulation
Targeting of RIA efforts

- Targeting of resources improves RIA efficiency
  - limited or no RIA for low impact proposals
  - streamline processes for determining if a RIS is required
  - agency self assessment of the need for a RIS
  - analysis in a RIS should be proportional
Improving transparency of RIA consultation & reporting processes

• Develop a two stage RIS – consultation RIS and final RIS (such as COAG)

• Publish all RISs
  • Develop a central RIS register accessible on the internet (such as Aust Govt & COAG)
  • Publish at the time of the announcement of the regulatory decision
Improving transparency of oversight body RIA functions

- Publish oversight body assessments of RIS adequacy, including any reasons/qualifications
- Publicly (& regularly) report on agency compliance with RIA requirements
- Publicly report RIA good news stories
- Periodically evaluate performance of oversight bodies
### Gap between actual & leading practices:

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<th>COAG</th>
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For the full benchmarking report: