

# **DETERMINANTS OF QUALITY IN REGULATORY IMPACT ANALYSIS**

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## SUMMARY

0.1 The implementation of regulatory impact analysis (RIA) requires substantial resources. Many OECD Member countries are supporting significant efforts to refine and improve RIA systems and processes. This continuing evolution of RIA underlines the fact that RIA implementation is a long-term process which necessarily requires significant cultural changes to take place throughout the government policy-making apparatus. Maximising the contribution of RIA to regulatory quality requires attention to the full range of RIA process elements as well as the range of specific quality assurance mechanisms.

0.5 This paper highlights recent advances in the application of RIA as well as some areas of continued concern. It draws on information received from a set of OECD countries, together with the 2004 RIA inventory and other recent work on developments in RIA.

0.6 In general, the picture is of RIA continuing to be more widely applied, with more countries applying RIA to primary legislation and, more generally, a wider range of regulatory instruments being subject to RIA. At the same time, a range of threshold tests is being applied in order to ensure that RIA is appropriately targeted toward substantive regulation where it has the potential to affect regulatory outcomes.

0.7 Greater assistance is being provided to regulators to improve the conduct of RIA, embracing guidance on methodological elements such as risk assessment, discount rates and the statistical valuation of a human life from a welfare perspective. Particular attention is being paid in several countries to means of ensuring that quantitative and qualitative RIA analysis are integrated effectively to provide better information to decision-makers.

0.8 However, concerns that RIA is often adopted to late in the policy process and that, consequently, it often has little impact in determining regulatory choices, remain widespread. While some steps are being taken to address this issue, particularly through better integration of RIA and public consultation and through the use of *ex post* analysis of RIA in some areas, this remains one of the major challenges for RIA implementation.

0.9 In sum, OECD member countries are continuing to invest heavily in RIA and are reaping greater returns for this investment. However, much remains to be done to cement RIA as an integral part of the policy decision-making process.

## DETERMINANTS OF QUALITY IN REGULATORY IMPACT ANALYSIS

### 1. Introduction

1. Regulatory impact analysis is a mechanism for systematically identifying and assessing the benefits and costs of a regulatory proposal. It constitutes a fundamental tool of regulatory quality assurance and is now used by almost all OECD countries, by the European Commission and in many countries in transition.

2. The history of regulatory impact analysis as a formal regulatory quality tool extends over more than 25 years. Within the OECD context, the 10 point checklist accompanying the 1995 Recommendation of the OECD Council on Regulatory Quality highlighted the need to undertake an assessment to ensure that the benefits of regulations justified the costs. In 1997, the OECD formulated a set of RIA best practices (OECD, 1997). However, despite this extensive history, the implementation of RIA and its integration into public policy processes remains a work in progress. The OECD, in common with those member countries that have substantial experience in implementing RIA, has consistently emphasised that developing and implementing RIA systems is a long-run process, which must involve achieving cultural change within regulatory agencies.

3. This paper is intended to provide practical assistance in relation to the implementation of high-quality RIA systems and the maximisation of their impact on regulatory quality outcomes. It draws upon data included in the responses received to a questionnaire sent, in mid-2006, to selected OECD countries, each of which has substantial experience in the implementation of RIA. Responses were received from Australia, the Netherlands, the United Kingdom and the United States. It also draws upon the RIA Inventory prepared by the Secretariat in 2004 (GOV/PGC/RD(2004)1) and other previous OECD work in relation to RIA.

4. Experience shows that optimising the quality of RIA requires a multifaceted approach, embracing all elements of the design, implementation and review of RIA processes and procedures. The layout of this paper recognises this reality. Section 2 and 3 discuss contributors to RIA quality in broad terms, including process design, methodological requirements and authority elements. Section 4 discusses specific RIA quality assurance mechanisms, while Section 5 of the paper highlights practices that appear to be of particular importance in terms of achieved RIA quality, as well as identifying major future challenges for continuing RIA quality improvement.

### 2. RIA processes and methodologies

#### 2.1. *Commencing RIA at an early stage of policy development*

5. The importance of the timing of the RIA process has long been highlighted, with the OECD's 1997 RIA best practices stating that was necessary to “integrate RIA into the policy-making process, beginning as early as possible”. As this statement suggests, it is only if RIA is commenced at an early stage of policy development that there is any real possibility of it being adopted as an integral part of the policy process, rather than as a separate, procedurally based requirement which takes on the character of an *ex post* rationalisation of the policy choice already made.

6. In particular, a thorough analysis of alternatives to the regulatory proposal is only likely to be undertaken if the final policy choice has yet to be made. The emphasis contained in the Australian RIA guidelines (published as long ago as 1998) on the need for “*a comprehensive assessment of each option’s expected impact*” to be prepared reflects a longstanding focus of regulatory reform authorities on the need to encourage regulators to undertake a serious and detailed assessment of different policy options.

7. RIA guidelines have, in most cases, taken up this emphasis on the need for early commencement of RIA and are often quite explicit about the stage of the policy process at which RIA ought to be commenced. For example, the Australian guide (ORR, 1998) states that the RIA document should be prepared after an administrative decision has been made that regulation may be necessary, but before a policy decision is made by government that regulation is necessary. The New Zealand guide (New Zealand Government, 1999, p. 2) makes an almost identical statement in this regard. Similarly, the current draft UK Impact Assessment Guide (United Kingdom Government, 2006a, Appendix B, p. 25) states that:

*“The Impact Assessment should be a living document – which will need to be revised a number of times as information about the likely costs or benefits becomes clearer. In the early phase of policy making there are likely to be a number of options and departments should produce an Impact Assessment for each of these...”*

8. Recent assessments of RIA performance continue to emphasise the importance of commencing RIA at an early stage. A recent report of the UK National Audit Office (NAO, 2006, p. 3) states “*Our analysis showed that the RIA process was often ineffective if started late,...*” Some analysts, such as Jacobs (2006) go further, arguing that the timing of RIA may be more important than the methodology employed in determining the quality of the assessment of alternatives and noting that multi-stage RIA requirements seem to encourage earlier use of RIA. Some Australian experience with two-stage RIA processes<sup>1</sup> appears to lend support to this view, with draft RIA documents being released for extensive public consultation processes well in advance of the consideration by ministers of final RIA documents. Substantial improvements to the analysis and, in many cases, significant changes to the regulatory proposal are commonly found during these processes.

9. However, multi-stage RIA appear to remain rare,<sup>2</sup> possibly due to concerns that a multi-stage process would add unduly to procedural complexity and length and reduce the flexibility of regulators to respond in a timely way to emerging issues. Arguably, multistage RIA requirements are also seen as likely to be unduly resource intensive in many cases.

10. There are numerous indications that the problem of RIA being commenced too late in the policy process and being, in effect, used to justify regulatory choices that have already been made, remains widespread. In the UK, for example, the National Audit Office, which annually reviews a sample of RIA, recently commented that:

*“...too often RIAs are used to justify decisions already made rather than an ex ante appraisal of policy impacts. If RIAs are to fulfil their role to inform and challenge policy-making, they should be started early in the decision-making process, and involve wide-ranging consultation with key stakeholders...”*<sup>3</sup>

11. A recent review of RIA in Australia found that around 14% of regulatory proposals in respect of which RIA were finalised in 2004-05 had been changed substantively during the course of the RIA process. However, regulatory reform officials reported that the degree of commitment to the RIA process as an inherent part of good regulatory processes was highly variable between policy officials in regulatory agencies and that the long awaited “cultural change” among regulators toward embracing RIA as a fundamental policy tool could not yet be said to have occurred.<sup>4</sup>

### **Box 1. The RIA challenge**

Regulatory Impact Analysis (RIA) is one of the most important regulatory quality tools available to governments. Its aim is to influence policy makers to adopt the most efficient and effective regulatory options, by requiring the use of evidence based techniques to analyse regulatory options. Much of the OECD's regulation checklist relates to RIA good practice.

The OECD has been recommending the use of RIA for some years, starting in 1995 with a Council Recommendation on Improving the Quality of Government Regulation. The 1997 *OECD Report on Regulatory Impact Analysis: Best Practice in OECD Countries* sets out a list of RIA best practices. The 2005 *Guiding Principles for Regulatory Quality and Performance* re-emphasise the use of RIA.

RIA is a challenging process that needs to be developed over time. Practice varies widely across the OECD but issues encountered in its application include:

- Omissions. Parts of the regulatory structure may not be covered, especially at sub central level.
- Inadequate use of evaluation techniques. Cost/benefit analysis and other techniques are often not well used.
- Poor compliance. Poorly prepared regulations often remain unchallenged.
- Complexity and fragmentation. Too many checklists can cover a bewildering range of issues.
- Failure to target the most important rules. To avoid administrative overload, RIA needs to be targeted at regulations with the largest potential impacts and the best prospects for changing outcomes.
- Poor integration with consultation processes. RIA is often separate from or not included in consultation processes, which limits its practical effectiveness.

## **2.2. The scope of RIA requirements**

12. A fundamental determinant of the ability of RIA to contribute to improved regulatory quality is the breadth of its application. In principle, RIA should be applied to all regulatory instruments that potentially impose significant costs. At the same time, RIA should not be required in respect of relatively minor regulation, as it has limited ability to improve regulatory quality in such circumstances.

### **2.2.1. Range of regulatory instruments subject to RIA**

13. Previous OECD work has emphasised that the most important benefits of RIA are likely to be obtained from its application to primary legislation, since it is here that the farthest reaching regulatory impacts are generally found. At the same time, the application of RIA to significant delegated legislation is also likely to be highly productive.

14. The 2004 RIA inventory showed that, despite a considerable broadening of the scope of RIA in recent years, there remain considerable divergences between OECD countries in this respect. Most countries now apply RIA to both primary and subordinate legislation. However, a very large minority applies RIA only at one or the other of these levels of legislation, with similar numbers of countries applying RIA to primary legislation only and to subordinate legislation only.

15. Similar divergences can be found at the sub-national level. For example, the Australian Federal government applies RIA to both primary and secondary legislation but only one Australian State government (Victoria), follows suit. The rest apply RIA either to primary or to secondary legislation, or not at all.

16. Limited information is available regarding the reasons why many countries have chosen to apply RIA to only certain types of legislation. One likely explanation of the use of RIA only at the level of subordinate legislation is that governments and/or parliaments see a greater need to constrain regulatory authority that has been delegated, rather than that which is exercised directly. Indeed, the history of RIA implementation shows that this requirement is often perceived as an unreasonable intrusion on the decision-making authority of regulatory actors. Thus, it would be unsurprising to find that many governments had taken the view that they were not prepared to constrain themselves directly through the application of RIA to primary legislation.

17. A second explanation for the application of RIA only to subordinate legislation is that many countries view the processes by which primary legislation is made inherently more robust than those applied to subordinate legislation and, therefore, more capable of systematically yielding a high-quality outcome. For example, Canada comments (OECD, 2004, p. 16) that, while it applies formal RIA requirements only to subordinate legislation, the process for adoption of primary laws typically involves a range of elements that promote the development of high-quality legislation including consultation with stakeholders, discussion of policy proposals among government ministries with different mandates, discussion of the proposal by Cabinet and public debate in Parliament during the legislative process.

18. Certainly, the more extensive procedures typically applied to primary legislation can be expected to highlight shortcomings more reliably, identify possible alternative approaches and yield significant information as to the likely impact of the legislative proposal. However, unlike RIA, these processes do not require a systematic identification and assessment of benefits and costs to be undertaken, and nor do they specify standardised methodological approaches for analysing these impacts and interpreting the results.

19. Where RIA has been applied only to primary legislation this is likely to reflect the application of a highly targeted approach, and is consistent with the need to focus limited RIA related expertise on its most productive uses, particularly in the early stages of RIA implementation.

20. The question of the scope of RIA also has other dimensions. Particularly where RIA requirements are contained in legislation, some countries have found that the requirements cover only certain types of secondary legislation and exclude others which have similar impact, but a different legal status. For example, in the United States, RIA is applied only to secondary legislation (*i.e.* to agency made rules) but, even here, rules made by “independent” regulatory agencies are excluded from the coverage of RIA.

### 2.2.2. *Threshold tests*

21. While the above discussion has focused on “gaps” in the coverage of RIA, the experience of some countries includes criticism that RIA is too widely applied, in the sense that is applied either to regulation with relatively minor impacts or to regulation in respect of which there are few, if any, feasible policy alternatives for consideration. Here, the concern is that the RIA process itself would arguably fail a benefit/cost test in such cases.

22. A significant issue in this regard seems to be the difficulty of identifying suitable thresholds for the application of RIA to relatively minor regulation. Most countries have adopted explicit “filtering” mechanisms which limit the number of regulations that are subjected to RIA requirements and, in some cases, vary the extent of the RIA required to be undertaken according to the defined threshold tests. However, there is considerable divergence between countries as to the nature of the specific filters applied.

23. While several countries specify quantitative thresholds in terms of regulatory costs for application of RIA requirements, these have typically been supplemented by qualitative thresholds. For example, the United States defined “major” rules in 1981 as those which are likely to impose annual costs exceeding \$100 million or those likely to impose major increases in costs for a specific sector or region, or have significant adverse effects on competition, employment, investment, productivity or innovation (OECD, 1999a, p. 157). Similarly, in addition to a quantitative threshold, the Korean test requires quantitative RIA to be undertaken if it affects more than one million people, there is a clear restriction on market competition or a clear departure from international standards (OECD, 2001, pp 151-2). Mexico specifies three levels of required RIA and distinguishes between them by a combination of both quantitative cost thresholds and qualitative judgments as to whether the regulation would have non-negligible impacts on employment or business productivity.

24. Many other countries have adopted solely qualitative statements, requiring RIA in cases where regulations potentially impose “appreciable burdens”, “non-negligible burdens” or the like.

25. The scope of these tests is itself subject to differences between countries. In some cases, the RIA requirement is triggered if an impact on any sector in society crosses the relevant threshold, while in other cases only impacts on business are considered. In the UK, impacts on business, charities and voluntary sector are considered in determining whether the RIA threshold has been crossed. Clearly, the welfare economics perspective underlying RIA would suggest that, whatever the threshold used, it should be assessed in terms of impact on any sector in society, rather than being limited to impact on certain sectors.

26. The Netherlands approach to “filtering” regulation for RIA purposes is different again. It has long used a two-step RIA process, where the results of a preliminary RIA are assessed by the regulatory reform authority to determine whether a full RIA must be completed and which RIA tests must be applied to the proposal. The European Commission has recently implemented a similar approach.

27. Interestingly, the Netherlands reports that when the two-step process was evaluated in 2004/05, it was concluded that the application of the initial “quick scan” assessment did not contribute significantly to the quality of the final RIA. While a critical approach to the application of particular RIA tests to specific regulatory proposals is still being undertaken, the “quick scan” test is now frequently being omitted; changes to the RIA process in response to the results of the review are likely to be considered by the Cabinet in 2007.

28. These filters appear to have a number of purposes. Most obviously, they are intended to reduce the demand that RIA requirements based on benefit/cost analysis place on scarce resources. This, in turn, suggests that relatively more resources will be able to be applied to carrying out RIA analysis in respect of the most important regulation. In the Dutch case, a selective approach to RIA tests of particular regulations aims to ensure the relevance of the RIA to the particular policy proposal. More broadly, restricting RIA requirements to those regulations where its impact is likely to be greatest and where the opportunity to affect the regulatory outcome is most substantial both improves its cost effectiveness and its credibility with regulators generally.

29. Perhaps coincidentally, the number of RIA completed annually shows a degree of consistency from country to country, despite the observed differences in the threshold tests for the completion of RIA that are used and differences in the extent of regulatory activity.<sup>5</sup> In the United Kingdom, around 200 RIA are finalised annually (NAO, 2006). In the United States, approximately 100 RIA are prepared annually (OECD, 2002, p. 132).<sup>6</sup> Similarly, in Australia, around 80-100 RIA are typically completed annually in respect of Federal government regulation (PC, 2005).

### 2.3. Analytical scope of RIA

30. The second set of methodological issues relates to the breadth of the analysis that is required to be undertaken. A full benefit/cost analysis takes into account impacts on all groups within society. However, perhaps reflecting the historical/political genesis of regulatory reform programmes in many countries, it is common for there to be a particular focus on impacts on business (and/or in some cases, on small business). In other cases, while all impacts are required to be assessed, the threshold which determines whether or not RIA must be undertaken reflects whether there is likely to be a substantial impact on business. Of course, most countries have quite rigorous requirements for impacts on the government budget to be assessed. These requirements often pre-date the use of RIA and essentially reflect the better established controls that exist on government budgeting (*i.e.* taxing and spending) generally, rather than being a specific product of RIA requirements.

31. RIA is often begun as a requirement to analyse impacts from one or more partial perspectives, before broadening progressively over time.<sup>7</sup> This broadening of the required assessment appears to be partly pragmatic: as experience with RIA develops, expertise is also developed, so that more extensive analysis becomes feasible. As well, RIA becomes better accepted by stakeholders as it becomes better understood. As noted by the United Kingdom, the adoption of a broader analytical requirement, in preference to partial assessments, also favours acceptance of RIA as a neutral, evidential tool. This occurred in the UK in 1996, with a shift from compliance cost assessment, focused on business costs, to RIA embracing economic, social and environmental effects.

32. A distinction can be drawn between countries that have required a progressively wider range of impacts to be assessed, but have undertaken each assessment separately (*e.g.* the EC, prior to 2003, and Finland, which requires assessments of budget, economy, organisation and manpower, environment, society and health, regional policy and gender equity, all of which are conducted by individual ministries), and those that have broadened assessment requirements within the context of a single impact assessment document (*e.g.* the United Kingdom).

33. The case of the Netherlands also appears to fit within the group of countries that conduct several partial RIA largely separately. In the Netherlands, a new RIA policy implemented in early 2003 requires that four distinct tests must be carried out. These are the Business Impact Test, the Environmental Impact Test, the Predictability and Enforceability Test and Cost/Benefit Analysis. The quality of each of these tests must be assessed by a separate Ministry: the Ministry of Economic Affairs assesses BIT, the Environment Ministry assesses EIT and the Ministry of Justice assesses the P&ET. The BCA is described as clarifying the “financial consequences” of the legislative proposal. Thus, it appears that the BCA may not constitute an attempt to integrate the other three tests into a single analysis, but rather represent a limited analysis that focuses specifically on those benefits and costs that can be measured directly in terms of dollar amounts. The apparently separate nature of the various tests required to be undertaken as part of the RIA requirement reflects the broader Dutch approach to regulatory reform, in which there is no central regulatory reform authority, with reliance instead being placed upon a number of different ministries taking on specific regulatory reform related responsibilities.<sup>8</sup> The Netherlands believes that this shared approach to responsibility for regulatory reform policy ensures that several ministries are actively working in favour of reform objectives.

34. A second trend can also be identified in respect of partial impact analyses. In some contexts in which a broad BCA requirement already exists as the basis for RIA, additional requirements to focus explicitly on impacts on particular groups (*e.g.* small business, regional areas, the family) are being established, which may be more or less integrated with the general BCA requirement. In the United Kingdom, the National Audit Office (NAO, 2006, pp. 9-10) recently commented on this phenomenon, noting that:

*“The RIA process initially consisted of a cost-benefit analysis of the regulatory proposal and a requirement to analyse the specific impacts on small business and competition. It has since expanded to include a range of other tests...”*

35. The report goes on to identify the following additional specific, or partial impact assessments that are currently required to be undertaken as part of British RIA:

- Legal aid impact assessment;
- Race equality impact assessment;
- Health impact assessment;
- Rural proofing;
- Sustainable development;
- Small firms impact tests;
- Competition assessment.

36. Similarly, in Australia, regional impact assessments and small business impact assessments are required to be conducted, while the government has also agreed in principle to adopt a requirement for family impact assessments as part of the RIA process. Where fees or charges are to be levied, a Cost Recovery Impact Statement is also required to be prepared.

37. In Canada a Business Impact Test must be completed as part of the RIA requirement, with separate guidance on completing this requirement being published by the regulatory reform authority. In New Zealand a separate Business Compliance Cost Assessment is also required to be completed and submitted with the RIA and is intended as a mechanism to encourage the minimisation of administrative burdens. The requirement for a separate analysis to be prepared in this respect stands in contrast with the general approach taken in New Zealand in which impacts on competition, market openness, small businesses, regional areas and specific social groups are all expected to be included in the RIA itself.

38. Requirements for explicit analysis of a range of sectional impacts tend to focus on groups whose claims are considered to be particularly compelling from a distributional viewpoint. The apparent proliferation of these requirements is arguably an outgrowth of the historical concern, voiced in many countries, that RIA tends largely to ignore the distributional impacts of policy and, as such, is an inadequate, or even misleading guide to policy action. While such criticisms have not always been well founded, there is a clear potential for these requirements for explicit analyses of sectional impacts to be conducted to have an important political impact. By neutralising a frequent criticism of RIA and providing reassurance that distributional impacts are properly accounted for, greater “buy-in” to the RIA concept may be achieved among a wider range of stakeholders.

39. However, OECD (2002) highlights the potential negative impact of these approaches. In particular, these include the risk of failing to integrate multiple, sometimes conflicting sectional analyses into a concise and coherent policy conclusion. The process of completing a number of separate, sectional analyses can also multiply the resource costs of undertaking RIA. Moreover, as suggested above, the identification of particular sectional groupings as deserving of special consideration within the RIA context can suggest that impacts on these groups should somehow be more heavily weighted. It may, indeed, be that governments are prepared to make political choices to weight certain impacts more heavily in some

cases. In such cases, it is essential that the extent of, and rationale for, any such weighting are made explicit in the RIA if the transparency and consistency of individual RIA are to be maintained and comparability between RIA is also to be retained.

40. Clearly, the integration of these partial analyses into the larger BCA is essential if they are not to pose significant risks for policy coherence or to unnecessarily increase the resource cost of completing RIA. Arguably, a generic requirement for any significant distributional implications of a policy to be identified as part of the RIA process, supplemented by the inclusion of material on key sectional impacts to be considered in RIA guidance documents, would meet many of the underlying concerns that have given rise to these additional partial analyses while reducing the above risks. That said, such a requirement will almost certainly be less effective in meeting the political need to reassure stakeholders that such impacts are properly taken into account.

41. Again, the underlying principles of welfare economics indicate that the RIA should incorporate assessment of impacts on all groups within society. Moreover, all kinds of impacts must be integrated within RIA. While, to an economist, benefit/cost analysis necessarily accounts for all kinds of goods and bads, the history of RIA implementation indicates that many stakeholders are concerned that BCA focuses exclusively on “economic” benefits and costs to the exclusion of “environmental” and “social” benefits and costs. Indeed, this concern may underlie what can be interpreted as an explicit rejection of the principle of maximising net benefits as a BCA decision rule in Canada's 2005 draft RIA guidelines, which state:

*“[Regulators] should look at the overall benefits and costs to Canadians, business and government, and choose the option that is the most appropriate, not necessarily the one that offers the greatest benefit at the lowest cost.”*

42. In this context, it can be noted that the EC implemented a fundamental change in its approach to RIA in 2003, when it replaced the use of separate, partial impact analyses with a single, integrated analytical approach. Perhaps in order to emphasise that BCA is intended to be conducted in as wide ranging a manner as possible, the European Commission now refers to “Integrated Impact Analysis”, which is defined as an analytical approach which integrates the analysis of economic, social and environmental benefits and costs. Within this “integrated” framework, there can presumably be no objection to the adoption of a rule of maximising net benefit.

43. Concern that RIA may be failing to capture all regulatory impacts that are relevant to policy decision making also appears to underlie a recent trend for some RIA guidance documents<sup>9</sup> to include requirements for a range of macroeconomic impacts to be assessed. These include requirements to highlight the impacts of certain regulatory interventions in relation to employment, GDP, innovation, poverty or other important macroeconomic variables.

44. However, such requirements are necessarily problematic: a full assessment of macroeconomic impacts necessarily requires the adoption of sophisticated economic modelling, based on a general equilibrium framework. While some RIA have attempted this task, it is unlikely to be feasible in the majority of cases, given the general scarcity of expertise and resources available for the conduct of RIA in most countries. Indeed, as the OECD country reviews of regulatory reform have frequently demonstrated, many government administrations (or, at least, regulatory agencies) lack the economic expertise required to complete more limited RIA tasks including reasonably comprehensive benefit/cost analyses.

45. In such circumstances, implementing requirements to undertake substantially more demanding analyses involving general equilibrium models risks having perverse impacts, by diverting resources and focus from more feasible RIA tasks. That said, substantial general equilibrium analyses of major regulatory interventions are to be found in the regulatory literature. For example, as long ago as 1990, Hazilla and

Kopp presented a study of the costs of the United States' Clean Air and Water Acts, using a dynamic computable-general-equilibrium (CGE) model developed for the study. Indeed, a key conclusion of this analysis was that compliance costs were a relatively poor surrogate for changes in individual well-being (*i.e.* economic welfare).<sup>10</sup>

46. In sum, these broader approaches have the potential to provide a significantly enhanced analysis in relation to relatively small numbers of far reaching regulatory interventions, but are unlikely to constitute feasible approaches for the bulk of proposals that are subject to RIA requirements. Moreover, attempts to establish such requirements more broadly risk undermining support for RIA generally by confirming the fears of those within government who are, in any case, inclined to see RIA as amounting to “paralysis by analysis”, being unduly resource intensive and generating results that are too technical in nature to be relevant to real policy decision-making at the political level.

47. Moreover, some analysts challenge the notion of requiring RIA to analyse impacts on specific macroeconomic variables such as poverty or innovation on conceptual grounds, at least when applied to less far-reaching regulatory proposals. Jacobs argues that macroeconomic variables such as innovation and poverty (required to be considered, *inter alia* by Ireland's RIA guidance documents) “*are not the result of a single government intervention or regulation, and there is no analytical technique for assessing these impacts in an RIA*” and, more generally, “*no method is capable of determining the macroeconomic impacts of isolated microeconomic intervention, except in its most static and short-term dimension*”. To Jacobs, these requirements reflect “*fundamental confusion about the purpose and limits of RIA*”. (Jacobs, 2006, pp. 82-3).

48. As well, an optimistic view of the analytical insights potentially available through RIA may not be the sole reason for this increasing focus on macroeconomic impacts. A second probable driver of the trend toward inclusion of macroeconomic analysis in RIA is that regulators (or economic consultants engaged to prepare RIA) sometimes present analyses of short term macroeconomic benefits in order to distract attention from other shortcomings of regulatory proposals. A recent RIA prepared in relation to proposed regulations requiring the installation of solar hot water or rainwater tanks in all new houses in Victoria, Australia provides an example which fits this hypothesis.<sup>11</sup> It demonstrates some key problems with attempts to justify regulations by reference to supposed macroeconomic benefits. For example:

- GDP gains are identified due to the effect of regulation in mandating the use of a technology which is likely to lead to import substitution in the short term, but allocative efficiency losses are not accounted for;
- similarly, employment gains due to substitution in favour of products produced via more labour-intensive methods are cited, while probable losses in labour (and total factor) productivity are ignored.

49. Moreover, while these benefits were assessed in general equilibrium terms, no equivalent analyses of the major costs associated with the proposal were conducted.

50. Clearly, regulatory reform authorities ought to have been able to identify and challenge such a flawed analysis effectively as part of the RIA assessment process. That this did not occur perhaps highlights the fact that the adoption of more sophisticated economic methodologies in the RIA context will necessarily place greater demands on regulatory reformers, at least as much as those responsible for preparing RIA.

## *Competition impacts*

51. A further development in the direction of broadening the scope of RIA is that increasing numbers of countries are requiring RIA to incorporate an explicit consideration of the competition impacts of regulatory proposals. Given the general tendency for competition analysis to focus on market dynamics, this trend is likely to increase the degree of attention given to at least certain kinds of dynamic factors in the RIA context over time. The concept of competition policy assessment also increasingly embraces its international aspects, essentially constituting the concept of “market openness”, although this broader competition perspective remains far from universal.

52. However, while the RIA inventory indicates that a large number of countries require competition issues to be addressed, little specific guidance is provided in most cases. Current OECD work is focusing on means of effectively integrating competition policy analysis with RIA, particularly by providing appropriate guidance for RIA authors. This reflects recent initiatives in a small number of Member countries. The United Kingdom has adopted a specific competition impact test for use in the RIA context.<sup>12</sup> In addition, the Dutch Business Impact Test includes questions on competition related impacts of regulatory proposals, some of which are formulated in a benchmarking context. Thus, one question asks what equivalent regulation exists in the most relevant competitor countries for the affected businesses. Moreover, other questions ask whether the proposed regulation goes beyond the requirements of any relevant EU Directive and requires any regulation that would impose greater stringency than the relevant EU standard to be explicitly justified. Finally, the BIT also contains a “market mechanisms” test, which must be answered in terms of a range of standard competition related tests.

### **2.4. RIA methodology**

53. The 1997 OECD Principles state that a “flexible but consistent analytical methodology” should be employed for RIA. Benefit/cost analysis has subsequently (OECD, 2002) been identified as constituting “the gold standard” in respect of RIA methodologies. However, a range of other methods is also routinely used, reflecting in part the practical difficulties of completing quantitative benefit/cost analyses in respect of regulatory proposals.

#### *2.4.1. Benefit/cost analysis*

54. Previous OECD work (see OECD, 2002, p 45 *et passim*) has found that the sophistication of RIA methodology tends to increase over time as experience and expertise develop. This finding is reflected in the results of successive OECD Regulatory Indicator Surveys, which show that benefit/cost analysis is being increasingly widely adopted as the formal methodological requirement underpinning RIA within OECD countries. The survey results also show that requirements to quantify benefits and costs have been implemented by a substantial number of countries using RIA.

55. However, there appears to be widespread recognition that such requirements which constitute “best practice” are very frequently not met in individual RIA. Even those countries with the most extensive experience in implementing RIA acknowledge that the proportion of RIA that manage fully to quantify benefits and costs, and produce a robust net present value result, remains relatively small. Little quantitative data appears to be available on the extent to which RIA succeed in quantifying costs and benefits overall. The RIA inventory reported data for the US EPA which showed that only 39% of RIA prepared by this agency reported a net benefit figure in the period 1996 to 1999. However, this represented a substantial improvement on the figures cited for previous periods. One analysis conducted in Australia in 2001 found that only 29% of RIS fully quantified costs. However, a more recent analysis conducted in the State of Victoria, Australia showed an increase in the number of RIS quantifying costs from 17% to 50% within a single year,<sup>13</sup> possibly underlining the importance of the role of the central regulatory reform authority in driving quality controls for RIA.<sup>14</sup>

56. Anecdotal information from a number of member countries also suggests that the degree of quantification of benefits and costs being achieved is continuing to increase. Certainly, numerous countries have recently implemented policy initiatives that aim to increase the degree of rigour required in RIA, leading Jacobs (2006, p. 78) to identify a “*global trend toward more rigour and more quantification in RIA*”. However, the complete quantification and monetisation of benefits and costs appears to remain a goal that is not achieved in the majority of cases. Moreover, data limitations, resource constraints and other factors mean that the goal of fully quantifying and monetising benefits and costs is likely to remain elusive.

57. These problems are sufficiently intractable as to lead some to question the feasibility and appropriateness of establishing benefit/cost analysis as the formal methodological requirement to underpin RIA. However, as was pointed out in OECD (2002), the use of benefit/cost analysis is consistent with the underlying principle of welfare economics (and of regulatory policy), that the benefits to society as a whole of a particular policy proposal should exceed the costs. The adoption of benefit/cost of an analysis as a formal requirement ensures that the broadest possible approach is taken to RIA and therefore maximises the contribution of RIA to policy decision-making.

58. In the presence of uncertainty and inadequate information, benefit/cost analysis is most useful if it makes the underlying assumptions and assessments explicit and is accompanied by sophisticated sensitivity analyses in relation to the major variables. However, it must also ensure that quantitative and qualitative aspects of the analysis are appropriately integrated, so that factors that cannot be quantified are not effectively excluded from the analysis.

59. There is an increasing focus, among RIA leader countries, on the need for systematic and sophisticated integration of quantitative and qualitative analyses and monetised and non- monetised data in order to produce RIA that is as wide ranging and relevant to policy decision-making as possible and effectively recognises policy trade-offs and interactions. Jacobs (2006, pp 78-80) dubs this approach “soft benefit/cost analysis”. However, the European Commission stresses that this approach, while focusing on a better integration of a range of quantifiable and unquantifiable impacts, is also consistent with improved standards of economic analysis and quantification of benefits and costs:

*“The assessment of economic impacts must be strengthened so as to contribute to the objectives of the renewed Lisbon strategy. Deepening the economic pillar of impact assessment does not compromise the importance of ‘sustainable development’ and the integrated approach, which remains the basis of the Commission’s approach” (European Commission, 2005, p. 5).*

60. Effectively achieving this integration of RIA elements is likely to require the use of a range of strategies and methodological tools, many of which may not have been adopted in the RIA context to date. Some are relatively simple variations on benefit/cost analysis: for example, breakeven analysis can be deployed to clarify the nature of the qualitative judgments that are required if the regulation is to be judged as having net benefits overall. Others constitute quite distinct disciplines, many of which have received little attention in the regulatory policy context to date.

61. For example, Kaplan and Norton developed the “Balanced Scorecard Approach” in the early 1990s as a strategic management tool to enable enterprise managers to integrate financial and non-financial considerations. One Australian RIA guidance document proposes the use of the balanced scorecard approach in RIA, in circumstances in which significant impacts of proposed regulations cannot be quantified and these unquantifiable impacts are fundamental to regulatory choice.<sup>15</sup>

62. Identifying and evaluating the utility, for RIA purposes, of tools such as this, that may be contained in the management literature and elsewhere, may be an important future task if the current emphasis on the need for “integrated analysis” or “soft benefit/cost analysis” is to be translated into real improvements in RIA methodology and the ability of RIA to contribute to regulatory decision-making. Determining how these tools can be used in the specific context of regulatory decision-making is likely to be a particular challenge for regulatory reform authorities in the future.

63. In sum, there appears to be an increasingly generalised acceptance of the need to adopt the benefit/cost principle as the core of RIA methodology, with the centre of the debate increasingly shifting toward the issues of how effectively to integrate quantitative and qualitative balance of analysis into an integrated whole which best supports policy decision-making.

#### Valuation of a statistical life

64. RIA guidance in many countries (and in most leading RIA countries) emphasises the need to quantify impacts as far as possible and to assign monetary values where practicable. In the context of social regulation dealing with health and safety issues this implies adopting guidance as to the valuation of a statistical life saved.

65. As Viscusi has consistently pointed out, maximising regulatory cost effectiveness requires that the cost effectiveness of individual regulations should be equalised. That is, as long as regulatory resources are constrained, maximising overall effectiveness requires us to forego less effective regulatory choices in favour of more effective ones. Thus, in the health and safety context, the “cost of the statistical life saved” should be equalised across different regulations.

66. RIA guidance has rarely provided concrete guidance to regulators on this issue. This remains the position in respect of most RIA guidance documentation, even among leading RIA countries. For example, the Australian guidelines (dating from 1998) are silent on the value of the statistical life, while the larger benefit/cost analysis handbook which they reference<sup>16</sup> contains a discussion of different valuation methodologies and their conceptual bases and recommends that valuations of a statistical life should be based on willingness to pay methodologies, rather than the human capital model. However, it declines to recommend a particular dollar value for adoption. The United Kingdom's RIA guidance documents advise that estimates of the value of the statistical life saved should be made, but do not provide any specific guidance on acceptable or unacceptable values.<sup>17</sup>

67. In Canada, the 1995 *Benefit Cost Analysis Guide for Regulatory Programmes*,<sup>18</sup> while not explicitly endorsing any particular value of a statistical life, notes that “most estimates are in the range \$1 million– \$10 million”. However, it also notes that some Federal departments have developed their own explicit valuations of the cost of a life and implicitly endorses their use in the RIA context.<sup>19</sup>

68. Despite the relative absence of guidance on the value of the statistical life in historical terms, there are indications of a move in this direction in some recently adopted guideline documents. The RIA guidance document adopted in 2003 in the United States notes, in common with the Canadian approach noted above, that most estimates of the value of a statistical life contained in the risk literature fall within the range of US\$1 million and US\$10 million.

**Box 2. Valuation of a statistical life: Human capital and willingness to pay methodologies**

There are two basic approaches to valuing a statistical life in the context of benefit/cost analysis:

The **Human Capital** approach equates the value of a life with the productivity of the individual, as measured by the discounted stream of expected future earnings.

The **Willingness to Pay or required compensation** approach imputes a value of life from the wage premium that workers require as compensation for jobs which involve a higher risk of death.

The human capital approach is an *ex post* value of life based on what is lost after the event of death. Thus, it implicitly places a higher value on the statistical lives of young people or those with higher incomes. By contrast, empirical analysis suggests that WTP varies little with age (Alberini, 2002). For welfare economics and public policy purposes, it is more relevant to know what individuals are willing to pay to reduce the possibility of early death. Thus, the Willingness to Pay approach is often regarded as preferable for use in contexts such as RIA.

In general, calculations carried out under the two different methodologies yield significantly different outcomes, with WTP valuations almost invariably being substantially higher than those based on the human capital approach. This is reflected in the wide range of commonly used estimates cited above in relation to the US and Canadian RIA guides.

Source: Handbook of Cost-Benefit Analysis. Department of Finance and Administration (Australia), January 2006.

69. The 2005 European Commission Impact Assessment Guidelines<sup>20</sup> also provide specific quantitative advice on appropriate valuations of a statistical life. The EC proposes a “base case” valuation of €1 million, with sensitivity analyses to be conducted at values of €2.5 million and €0.65 million, although the basis for these proposed values is not discussed. This represents a narrower range of values, with the upper bound representing a value slightly less than four times higher than the lower bound figure. However, it is apparent that the values selected for inclusion in these two guideline documents are broadly comparable. Expressed in terms of euros, the range of values suggested in the US guidance document is equivalent to approximately €0.78 million to €7.8 million.

70. In general, it appears that there may be a gradually increasing willingness to provide specific value of a statistical life estimates in the context of RIA and general policy guidance in recent years. The apparent historical reluctance of governments to cite specific valuations is easily understood given the obvious political sensitivities involved, not least in simply acknowledging explicitly that such policy trade-offs do and must occur. In this light, the above evidence of progress in providing a basis for more consistent policy decision-making in these areas is clearly encouraging.

**Social discount rate**

71. The RIA inventory highlighted the importance of the social discount rate as a key issue in terms of benefits/cost methodology. An appropriate discount rate should be applied to benefit/cost analyses if the results are to be properly reflective of societal rates of time preference. Moreover, a consistent approach must be taken to the use of discount rates to analyse different regulatory proposals in order to ensure consistent decision criteria and the optimisation of the use of regulatory resources.

72. Guidance material on RIA varies significantly in its advice regarding the discount rate. For example:

- The EC specifies a real discount rate of 4.5%, stating that this corresponds with the average real yield on long-term government debt since the 1980s.
- Denmark sets the discount rate at 6%, in its Manual of Social Economic Analysis.
- The United States specifies a range of different real and nominal rates in respect of a different time horizons. The real rates vary from 3.0% (3 years) to 5.5% (30 years) and are based on the pre-tax rate of return on private sector investments in recent years (OECD, 2004, p. 7).
- The United Kingdom specifies a formula, rather than a rate, which takes into account the time preference of individuals, the elasticity of the marginal utility of consumption and the annual growth in per capita consumption (*ibid*).
- Australia recommends a discount rate based on the private cost of capital be used for most purposes, but does not specify any given rate (DoFA, 2006, p. 68).
- New Zealand's RIA Unit recommends a range of discount rates for different purposes, including rates of 5-7% in respect of health and safety based proposals, the long-term government bond rate in respect of matters involving government expenditures and lower [unspecified] rates in relation to environmental regulation (OECD, 2004).

73. In Canada, the Treasury Board Secretariat suggests using specialists to estimate discount rates that are appropriate to the particular regulatory context, but indicates that a social discount rate of around 10% is appropriate, with a range from 7.5% to 12% being acceptable. The Canadian Benefit-Cost Analysis Guide for Regulatory Programs (1995) cites an earlier (1976) guide and argues for a real discount rate of 10%, with sensitivity analysis to be conducted at 5% and 15%. These values seem substantially different to those cited above. However, the conceptual basis underlying the Canadian values is unknown.

74. Higher real discount rates, as suggested in the Canadian guidance material, will have the effect of reducing the estimated NPV of a wide range of regulatory programmes, given that regulation commonly imposes substantial costs in the early years, while many benefits are often delayed into the future. Indeed, critics of RIA frequently fault it for what they see as its tendency to bias decision-making against long-term considerations. However, from an economic viewpoint, discount rates used in the RIA context must be reflective of rates of time preference found in the relevant society if they are to ensure that regulation is welfare enhancing.

75. Of course, there may well be legitimate reasons for different countries to adopt different discount rates. As the discount rate, in the RIA contexts, essentially represents the social rate of time preference, differences between the populations of different countries in terms of this preference function should be reflected in different discount rates. However, the extent of the differences highlighted above suggests that at least a part of the difference may be due to different conceptual approaches. Again, there is more than one defensible approach. Nonetheless, dialogue between policy officials may be fruitful in clarifying good practices in this area.

76. Clearly, where a specific rate or rates are cited, it is necessary to ensure that these are reviewed regularly and revised as necessary. That said, as some of the above approaches indicate, the rates specified should be based on long run average values for whatever benchmark is used, rather than point values. This suggests that frequent variation of advice on discount rates should not be required.

77. In the regulatory context, provision of specific advice on this and other methodological issues is likely to be consistent with the wishes of RIA authors who, for the most part, do not have the expertise required to make their own judgments in this area. Moreover, as suggested above, specification of a given rate will promote consistency in the rates used to analyse different regulations. While it is sometimes argued that discount rates should be varied to reflect differing degrees of uncertainty as to whether regulatory benefits will be obtained in practice, a preferred alternative approach is to use a common discount rate and deploy sensitivity analysis to deal with issues of uncertainty.

#### 2.4.3. *Cost effectiveness analysis*

78. While benefit/cost analysis is generally recognised as the RIA ideal, some countries with leading roles in RIA implementation also recognise benefits in adopting or encouraging the use of cost effectiveness analysis (CEA) in some circumstances. Cost effectiveness analysis differs from benefit/cost analysis in that it takes the regulatory goal as a given and simply ranks different alternatives in terms of the cost of achieving the given outcome. Recent (2003) guidance on RIA issued in the United States notes that:

*“...you should prepare a CEA for all major rulemakings for which the primary benefits are improved public health and safety to the extent that a valid effectiveness measure can be developed to represent expected health and safety outcomes. You should also perform a BCA for major health and safety rulemakings to the extent that valid monetary values can be assigned to the primary expected health and safety outcomes. In undertaking these analyses, it is important to keep in mind the larger objective of analytical consistency in estimating benefits and costs across regulations and agencies, subject to statutory limitations. Failure to maintain such consistency may prevent achievement of the most risk reduction for a given level of resource expenditure.”<sup>21</sup>*

79. It is notable, however, that the requirement with respect to regulation relating to health and safety issues is to prepare both a BCA and a CEA. The reference to the need to achieve analytical consistency “subject to statutory limitations” reflects the fact that the regulatory mandates established in some legislation effectively prevent benefit/cost analysis being used as the basis for decision-making but will allow CEA to be employed. This is believed to explain the fact that the US guidance document requires CEA to be used only in respect of health and safety-related regulation, while mandating BCA be used in respect of all of the regulations.

80. CEA has also been recognised as likely to prove more acceptable as a decision-making tool than BCA to regulators or policymakers who reject the application of the statistical valuation of human lives, injuries, etc. It must also be recognised that, in circumstances in which benefits are quantified but not monetised, an analysis which sets out to comply with BCA requirements will, inevitably, take on some of the characteristics of CEA. Apparently in recognition of this point, the US guidance states that CEA should also be undertaken wherever the “primary benefit categories” cannot be monetised.

#### 2.5. *Dealing with risk and uncertainty*

81. The concepts of risk and uncertainty are fundamental to public policy making and, therefore, to RIA. These issues were acknowledged in the OECD's 1997 publication on RIA,<sup>22</sup> but it is notable that no best practices for dealing with risk and uncertainty were identified at that time. The 2004 RIA inventory shows that most countries require that risk assessment be addressed within the RIA context, at least to some degree:

*Many countries adopt risk assessment in health, safety and environmental regulations, some in all cases, while others require it only for major regulations....Australia, Belgium, Denmark, the EU, Mexico, New Zealand, the United Kingdom and the U.S.A require risk assessment in all cases. Austria, the Czech Republic, France, Germany, Hungary, Norway, Iceland, Poland, Sweden and Switzerland require risk assessment only in selected cases. Some countries such as the Finland and Japan require risk assessment on environmental regulations in all cases, while only in selected cases in the area of health and safety.*

82. These general characterisations of country practices provide little specific information as to what kinds of risk assessments are employed and the purposes for which they are used. Risk assessment can be used in pursuit of a number of goals within the RIA process, as follows:

#### *Threshold tests*

83. Acknowledging the limits to regulation, most RIA guidance emphasises the need to adopt a threshold test to determine whether the identified problem warrants a government policy response. However, specific guidance as to how to conduct threshold testing is rarely given in the context of RIA guidance material, while the use of a quantified threshold for separating “acceptable” from “unacceptable” risks is also unusual.

84. From the policy perspective this is, perhaps, unremarkable. There are clear political risks involved in setting one or more unambiguous quantitative risk benchmarks to function as separators of acceptable and unacceptable risks in the policy context. However, the absence of any more specific or practical guidance on the question of appropriate decision rules to use when applying risk assessments in the context of a threshold test has obvious negative implications for policy effectiveness.

85. The most recent RIA guidance document published in the United States avoids providing any quantified estimates of what constitute acceptable or tolerable risks or, indeed, any discussion of the issue of risk acceptability. However, it does include an extensive discussion of the treatment of risk in RIA generally, including the nomination of acceptable values for a “statistical life”, as discussed above.

86. The Australian RIA guidance material includes a significantly less technical discussion of risk issues than its US equivalent but similarly avoids giving a quantified assessment of what constitutes an acceptable or tolerable risk. It does, however, propose a rule to guide risk reduction activity in the regulatory context, as follows:

*The objective of implementing a proposal to deal with risk should not be to reduce the risk at all costs or to reduce it to a minimum level, but rather to balance the benefits and costs to the community of reducing the risk (ORR, 1998, p. E28).*

87. This arguably equates to a policy of increasing the stringency of risk-based regulation until the marginal benefits and costs of further risk reduction are equated.<sup>23</sup> The New Zealand RIA guidance document provides neither a quantitative threshold for acceptable or tolerable risks nor any significant discussion of risk assessment. Jacobs (2006, p 7) notes that:

*In 2000, Canada adopted a detailed Integrated Risk Management Framework, but risk assessment scarcely appears in the framework, and is almost invisible in the 1995 RIA guide.*

88. It is notable, in this context, that some governments have adopted guidance on risk assessment that includes the use of quantitative thresholds. For example, in the United Kingdom, the Health and Safety Executive (HSE) proposes the following quantitative thresholds<sup>24</sup>:

- Fatality risks of 1 in 1 million years should be regarded as broadly acceptable.
- Fatality risks of 1 in 10 000 years should be regarded as at the boundary between tolerable and unacceptable risks for members of the public who have a risk imposed upon them in the broader interests of society.
- Fatality risks of one in 1 000 years should be regarded as the boundary between tolerable and unacceptable risks for workers to voluntarily assume a risk.

89. As the accompanying text indicates, these thresholds are essentially derived from observation of people's actual behaviour in terms of the voluntary assumption of risk, or avoidance of risk, and are consistent with much academic literature on risk assessment, including the writings of Viscusi.

90. Notwithstanding the availability of this very clear guidance on dealing with risk, neither the current nor the proposed RIA guidance material published in the UK summarises or refers to this material in any way. Certainly, many of the available RIA guidance documents appear deliberately to have been written with generalist policy officers in mind and to largely avoid highly technical discussions, presumably for this reason.<sup>25</sup> Nonetheless, a practice of referring the reader to sources of further guidance on technical matters would seem to be a useful approach in this regard.

91. There are clear risks for policy coherence if the risk approaches developed by bodies such as HSE (as the UK Government's main specialist body in this area), are not fully understood and reflected in the practice of other regulatory agencies as required. This suggests that authors of RIA guidance documents may need to act to ensure that government policy positions in relation to risk are fully reflected in the guidance material that they provide.

92. Interestingly, the Better Regulation Commission is currently completing a report that will "*look at how our understanding, acceptance and management of risk as a society influence our approach to regulation.*"<sup>26</sup> Such a focus on the specific issues surrounding risk and regulation would appear to be a highly positive step, potentially leading to a better integration of some of the important insights of the risk literature with regulatory practice.

#### *Uncertainty/Sensitivity analysis*

93. Issues of uncertainty and the need to conduct sensitivity analysis are discussed in many RIS guidance documents, including those currently in place in the European Commission, Ireland, New Zealand, the United Kingdom and the United States. The treatment given to these issues is broadly similar and emphasises the need to conduct sensitivity analysis where there are significant degrees of uncertainty attaching to major variables.

94. However, these guidelines generally do not specify any particular decision rules to be adopted when assessing the results of the multiple scenarios generated as a result of the conduct of sensitivity analysis. In no case is the issue of probability weighting of different scenarios to obtain expected values explicitly discussed or explained. This may, however, largely reflect the fact that RIA guidance documents are largely drafted with generalist policy officers in mind and, as a result, tend to avoid more technical discussions.

95. Nonetheless, it does appear that the issue of sensitivity analysis, having been identified, is subsequently given a relatively cursory treatment which is unlikely to convey an adequate understanding of the importance of this methodological tool. This implies that the role of regulatory reform authorities in advising on the development of individual RIS will be crucial in determining how effectively this tool is employed in individual circumstances.

#### *Peer review*

96. There is some evidence of a tendency to promote peer review as both a means of dealing with uncertainty and, more generally, as a quality assurance mechanism within the RIA context. The EC has indicated its intention to adopt peer review by scientific experts with respect to the proposed methodology of major RIA, where appropriate. Similarly, the United States RIA guidance material recommends the use of formal external peer review of RIA. Jacobs (op. cit, p. 69) also cites the *Information Quality Act* as having increased the use of peer review and, as a result, data quality.

97. In the Netherlands, current RIA policy requires that agencies enlist external expertise or support in carrying out the required RIA tests in certain cases. For example, the Central Bureau of Statistics must be involved in the conduct of the BIT, the National Institute for Public Health and the Environment must be involved in the conduct of the EIT and the Law Enforcement Expertise Centre or the Council for the Judiciary must be involved in the assessment of practicability and enforceability.<sup>27</sup> These requirements arguably also involve an element of peer review, since the external agencies would, presumably take on the role of providing a critique of the initial analysis conducted by the ministry sponsoring the proposed regulation.

98. Peer review is a topic that remains unaddressed in the great majority of RIA guidance documents. Neither the UK, US, Canadian, New Zealand nor Australian RIA guidance documents proposes the use of peer review. Even the recently introduced (October 2005) Irish RIA guidelines are silent on this issue, although it can be noted that Ireland is currently only taking the first steps toward RIA implementation.

99. Greater use of peer review, at least where RIA of major regulation is concerned, has the potential to increase both quality and credibility of RIA. Peer review is a fundamental element of the scientific method and is clearly applicable to the RIA context, particularly given the highly technical nature that many analyses of regulatory proposals necessarily manifest.

100. Clearly there are risks associated with the use of peer review, particularly in terms of the potential for peer review to impose significant additional resource costs and time delays. Moreover, where RIA are not released as public documents, there may be confidentiality issues to be resolved. However, all of these concerns are clearly capable of resolution and a judicious use of peer review within the RIA context deserves a wider consideration.

#### *Risk neutrality and the precautionary principle*

101. The issue of whether affected populations should be assumed to be risk neutral, risk accepting or risk averse is widely discussed within risk literature. Given the generalist orientation of most RIA guidance, it is perhaps unsurprising that the issue receives little attention in this context. However, the increasingly widespread promulgation of the precautionary principle in the regulatory context necessarily introduces this concept in the substantive sense. That is, the precautionary principle amounts to the integration of varying, but unspecified, degrees of risk aversion into the policy decision-making process.

102. Majone, in a paper previously prepared for the OECD, argues that the precautionary principle is “an idea (perhaps a state of mind) rather than a clearly defined concept, much less a decision rule or a guide to consistent policymaking”. As a result of its ill-defined nature,<sup>28</sup> the precautionary principle risks

leading to attempts to control poorly understood, low level risks, thereby consuming resources that could, in many cases be directed toward controlling more substantial risks. In this sense, the adoption of the precautionary principle potentially entails significant opportunity costs.

103. The precautionary principle has generally not been incorporated in RIA guidance material to date, perhaps largely due to this lack of any generally accepted definition of the concept, much less general agreement as to how it should be interpreted and applied in specific policy contexts.

#### *Risk/risk analysis*

104. Several RIA guidance documents explicitly recognise the issue of risk/risk analysis: that is, the observation that regulation designed to address risks in one context frequently give rise to increases in other risks. In general, the advice presented seems to go little beyond enjoining those responsible for RIA to recognise this issue and seek to incorporate assessments of these secondary risk effects within their analysis.

105. However, Wiener (2006, p. 17) sees this issue as one that requires “...co-ordination and oversight to manage these tradeoffs and if possible overcome them through innovative policies that reduce multiple risks in concert.” Wiener advocates a role for regulatory reform authorities in this regard, and notes that the proliferation of partial impact analyses, addressing regulatory effects on particular groups potentially increases this coordination difficulty.

#### **2.6. Provision of training/assistance in RIA methods and requirements**

106. RIA requirements are generally targeted, so that resources are only expended on RIA where regulation is likely to have significant impacts. A result of this is that a relatively limited number of RIA are prepared and, in turn, this implies that policy officials tend to conduct RIA only rarely.

107. This highlights the importance of providing adequate support to regulators to enable them to prepare high-quality RIA. Three main forms of assistance can be identified:

- Publication of RIA guidance documents;
- Provision of RIA training; and
- Provision of technical assistance on an ad hoc basis.

#### Publication of RIA guidance documents

108. Regulatory reform authorities in most countries with RIA requirements publish relatively detailed guidance material, typically covering both the procedural requirements associated with RIA and the substantive aspects of RIA preparation. Moreover, guidance on the conduct of benefit/cost analysis, as the core element of RIA, is widely available in a number of published sources. Given the technical nature of BCA, general RIA guidance documents sometimes refer readers to separate, more detailed BCA guidance documents.

109. Efforts to revise and update RIA guidance material appear largely to be ad hoc in nature, although there is significant variability in this regard. Many current RIA guides were first published some years ago; for example, the current edition of the Australian *Guide to Regulation* was first published in 1998, while the Canadian *RIAS Writers' Guide* dates from 1992. On the other hand, the current *Regulatory Analysis* circular in the United States dates from 2003 and replaces previous editions from 2000 and 1996. In the United Kingdom, the new draft RIA guidance document constitutes the third guidance document to be published since 2000.

110. Frequent revisions to guidance documents are obviously more likely to be observed where the RIA policy itself is subject to rapid development and change, as in the United Kingdom. However, there is a clear case for regularly revisiting RIA guidance materials in the light of accumulated experience with RIA implementation, developing understanding of RIA issues and best practices and the need to keep RIA consistent with broader government policy changes.

111. There is some evidence to suggest that regulatory reform authorities have sought consciously to ensure the standing and authoritativeness of this guidance material by linking it with the broader government policy agenda. For example, the preparation of the most recent edition of the United States' key guideline document<sup>29</sup> involved collaboration with the President's Council of Economic Advisers, as well as peer review and inter agency review processes. In Australia, the Office of Regulation Review's *Guide to Regulation* references the Department of Finance and Administration's *Handbook of Cost Benefit Analysis*, which has general application for policy and project analysis across government.

112. Interestingly, in the United Kingdom, a process of public consultation is being undertaken on the new draft RIA guidance document. This would appear to be a potentially effective means of ensuring the document meets user needs and demonstrates a commitment to responsiveness on the part of the central regulatory reform authority.

113. Such steps may constitute an additional mechanism by which the regulatory reform policy can be linked more closely with other government policy priorities thus helping reinforce the authority, and hence the effectiveness of the policy.

114. More recently, a number of countries have developed software based tools that can be used to assist in RIA development. The Netherlands developed the Standard Cost Model for measuring administrative burdens, which has subsequently been adopted by a more than a dozen other countries, who have formed the *Standard Cost Model Network*<sup>30</sup> to discuss developments within the area, and agree on what actions should be taken in the future. Interestingly, an independent Advisory Board on Administrative Burdens has existed in the Netherlands since 2000 and has the role of scrutinising RIA with specific reference to the quantification of administrative burdens. Its opinions are made public and may be drawn upon in either Cabinet or parliamentary debate on regulatory proposals. Another aspect of the role of the Advisory Board is that it provides advice on the most effective and least burdensome (from the viewpoint of administrative burdens) way of achieving the identified regulatory goal.

115. In Australia, the government recently announced that all RIA would henceforth be required to measure compliance costs using two software based tools: the Business Cost Calculator and the Small-Business Compliance Costing Tool.<sup>31</sup> These software tools typically function as a combination of checklist and calculator; prompting users to enter values for a wide range of cost and benefit types and subsequently calculating totals, present values and the like. The checklist aspects of these tools may be particularly valuable in ensuring that all relevant benefits and costs are identified by RIA authors. In addition, the systematic approach which these tools require users to take may minimise the likelihood of double counting and/or categorisation errors. However, concerns have been expressed in some cases that the tools themselves impose significant compliance burdens as a substantial learning process must be undertaken in order to be able to operate them effectively. Thus, regulators have sometimes found, if required to adopt these tools compulsorily, that they have increased the burden associated with the completion of RIA. Moreover, there is arguably a danger that the focus of these tools on entering quantified values for a range of costs and benefits leads RIA authors to focus more on what information is not available rather than what is available.

### *Provision of RIA training*

116. The 1997 OECD best practices highlighted the need to “train the regulators” to enhance RIA skills. However, while published RIA guidance seems to be provided almost universally, it appears that the performance of regulatory agencies in the area of training provision is less positive. The 2002 OECD report on regulatory governance, upon reviewing Member countries’ performance against the 1997 best practices, concluded that “*Most countries rate poorly against this criterion*” (p. 127), while there is limited evidence of subsequent improvements. A number of the OECD country reviews of regulatory reform have pointed to the need to increase efforts to train policy officials in the conduct of RIA analysis. Moreover, it was notable that only four countries (Australia, Greece, Italy and Mexico) cited the provision of training among the RIA quality control mechanisms that they identified in the context of the 2004 RIA inventory.

117. A few countries have undertaken substantial training efforts in recent years. Ireland has only recently implemented RIA requirements, but has made significant efforts to deliver relevant training as part of the implementation phase. This includes the delivery of several two day courses which place RIA requirements in a broader policy context.<sup>32</sup> A notable development in Australia is the implementation of tailored RIA training courses that are oriented toward the specific RIA needs of individual regulatory agencies. These courses are provided by the Office of Regulation Review on request and are developed in consultation with the requesting agency. The fact that more than 400 regulatory officials received training from the ORR in each of 2003/04 and 2004/05 (ORR, 2005, p 79) presumably indicates, in part, the popularity of this tailored approach to the provision of RIA training. A recent government announcement foreshadowed increased funding to the ORR are to further expand its training effort, including a focus on assisting regulatory agencies to develop skills in benefit/cost analysis.<sup>33</sup>

118. Another response to the ORR efforts in this area has been a degree of “internationalisation” of the RIA training task. A significant proportion (almost 20%) of the regulatory officials trained by the ORR during this period were officials of the New Zealand government (ibid).

119. A commonly acknowledged issue in relation to RIA training is that there are frequently high rates of turnover among regulatory agency staff. This means that there will often be a high level of continuing demand for RIA training as new staff take on RIA responsibilities. Equally, it implies that most training will need to be conducted at relatively basic levels and that there may be limited opportunities to use more advanced training courses to develop higher-level RIA skills: in practice, few agency staff are likely to have the opportunity to complete large numbers of RIA and thus develop these skills over time.

### *Provision of technical assistance on an ad hoc basis*

120. This observation of relatively few regulatory officials having the opportunity to develop high level RIA skills through frequent exposure to the RIA task highlights the need for external assistance to be provided if high quality RIA are to be generated. Most regulatory reform authorities have, in addition to publishing RIA guidance documents, provided technical assistance on an informal basis to regulators in the context of the development of individual RIA. In a relatively small number of cases, this function has been formalised to some degree.<sup>34</sup> The Netherlands pioneered this approach in the late 1990s when it implemented the “helpdesk” function.<sup>35</sup> Reflecting the multifaceted nature of RIA, the Dutch model sees the helpdesk function being a joint initiative between several government agencies.

121. An interesting variation on this approach is the recent proposal in Ireland to establish an “RIA network”. This arguably constitutes a decentralised version of the helpdesk idea, as it is based on the notion of an exchange of ideas and practices between regulators on RIA techniques, issues, experiences etc.

122. Regulatory reform authorities sometimes act as providers of advice/assistance on RIA related issues to regulatory agencies. However, this can give rise to the appearance of conflict between this role and that which many of them undertake as “gatekeepers”, with responsibility for assessing and approving the quality of the finished RIA document. The separation of this “support” function from the gatekeeper function, as achieved in the Netherlands via the creation of the helpdesk, constitutes one response to this perceived conflict. A more limited attempt at separation is currently being undertaken in Australia, where a “Benefit/Cost Analysis Unit” is to be established within the Office of Regulation Review which will be clearly separated from the RIA assessment function of that body.<sup>36</sup>

## **2.7. Locus of RIA activity**

123. The 1997 OECD RIA best practices report clearly envisaged that RIA should, in the majority of cases, be completed by generalist policy officials within regulatory agencies. This view was promoted because of the fundamental value attached to the need to integrate RIA into the policy development process. Thus, it appeared to be essential that those who were responsible for initial policy development should undertake the RIA task at the same time.

124. There is, however, growing recognition that the completion of adequately rigorous RIA requires significant technical skills in many cases. This issue has become increasingly apparent as the standard of RIA required has progressively increased over time. While regulatory reform authorities in most countries have provided a range of support mechanisms, notably in terms of published RIA guidance material and RIA specific training courses, the issue remains substantial.

125. One, more recent, response would emphasise the need for all regulatory agencies to develop a centre of expertise in the relevant core skills of economic and benefit/cost analysis. For example, the UK has established Better Regulation Units in each major department, while the Australian government has recently committed to providing additional resources to assist departments in improving their benefit/cost analysis and risk analysis skills.

126. However, it has also been argued (Deighton-Smith, 2006) that the use of external expertise (*e.g.* through the appointment of consultants) is not necessarily inconsistent with the achievement of the cultural change objectives in respect of RIA that were cited above. In this view, the fundamental issue is that of the nature of the relationship between the consultant and the policy officials: where the RIA consultant is brought into the policy process at an early stage, the relationship with departmental officials can be one of dialogue in which the work undertaken on the RIA can contribute to ongoing policy development, while also allowing for the transfer of expertise to departmental officials as part of the process.

127. Arguably, there is little operational difference between the employment of an external policy consultant and the use of departmental BRU staff, who can be considered to amount effectively to internal consultants. In both cases, the fundamental issue remains that of ensuring a direct and continuing dialogue between the RIA expert and departmental policy officials and decision-makers.

128. The key issue for regulatory reform officials is to improve RIA skills among policy officials over time. In Australia, there is some evidence to suggest (Deighton-Smith, 2006) that increasingly rigorous methodological requirements in respect of RIA is tending to lead to an increased use of external consultants in order to ensure that required standards are met. The Australian Office of Regulation Review states that it actively encourages the use of external consultants in the preparation of more detailed and technically demanding RIAs. .

## **2.8. Use of RIA in reviews of existing legislation**

129. The RIA framework of analysis is, necessarily, as well adapted to the review of existing regulation as to the *ex ante* analysis of new regulatory proposals. Indeed, the conclusions of RIA are likely to be more reliable when applied to existing regulation, as the wealth of actual experience derived from the implementation of the regulations provides a much larger stock of data for use in the analysis.

130. Despite this, indications are that relatively few OECD countries use RIA systematically when reviewing existing regulation. Among the respondents to the 2004 RIA inventory, only Australia and Canada indicated that RIA was used systematically in this context. Moreover, while Australia's National Competition Policy requires the adoption of a benefit/cost framework for legislative reviews, it is not clear that this approach is adopted in the context of other legislative review activity, undertaken outside the NCP framework.

131. The lack of use of RIA in this context appears fundamentally to reflect the failure, to date, of efforts to catalyse cultural change within regulatory agencies, such that RIA is recognised as a core part of the policy process and, accordingly, integrated into its procedures. Formal RIA policies are generally silent on the issue of the application of RIA to the review of existing regulation. Moreover, the fact that reviews of existing legislation are most commonly undertaken by individual regulatory agencies means that the processes for the conduct of these reviews are essentially a matter within the discretion of each agency.

132. The fact that RIA is not consistently used in reviewing stocks of existing regulation suggests that the rigour and effectiveness of these reviews will, in many cases, be substantially less than could be achieved. Moreover, new regulatory proposals and existing regulation may be assessed according to inconsistent criteria and methodological approaches. Moves to increase the use of RIA in the context of reviews of existing legislation have the potential to greatly enhance the contribution of RIA to regulatory quality. Attempts to mandate more consistent approaches to the review of existing regulation, however imply a more centralised approach, which may be difficult to achieve in the context of the administrative culture of many OECD member countries.

## **3. Authority elements and RIA quality**

### **3.1. High level political support**

133. The importance of high level political support for regulatory policy generally has long been recognised. Indeed, the 2000 regulatory indicators survey found that all OECD member countries stated that their regulatory policy had been either issued, revised or reaffirmed by the present government (OECD 2002, p. 29). As RIA is, for most countries, a core element of the regulatory policy, it can be expected that high-level political support would have major importance for the success of RIA as well.

134. Indicators of the extent of high-level political support for RIA are however difficult to identify. By definition, any broadly based RIA process must be established via a decree or other decision at the centre of government. However, this tells us little about the level of practical support for ensuring a high level of compliance with the policy, once established. That said, the RIA inventory suggests that the adoption of RIA requirements in legislation can be seen as an indicator that the government is particularly committed to RIA (see below).

135. In the United States strong political support for the centralised enforcement of regulatory principles and procedures (including RIA) is a central factor in the US approach to regulatory policy. In the United Kingdom, responsible Ministers must sign a statement to accompany each RIA document, stating that they have reviewed it and are satisfied that the benefits of the proposed regulation justify the costs.<sup>37</sup>

136. In Australia, high-level political commitment to RIA is arguably demonstrated through allocating the role of assessing RIA quality oversight to a body that has statutory independence from government.<sup>38</sup> More broadly, given the importance of independent review of RIA to the success of the policy, the authority given to the review body is clearly a major consideration. This essentially has two elements. The first is the placement of that body within the government's administration. As discussed in previous OECD publications (see OECD 2002), there has been a trend in recent years to locate regulatory review authorities in the centre of government, apparently in recognition of the importance of this authority issue. The second is the ability of the reform body to bring concerns with RIA quality, or the policy proposal more generally, to the attention of Cabinet or, in some cases, to prevent the policy from going forward for Cabinet consideration until the RIA has been approved as adequate.

137. A recent Australian report recommended that oversight of regulatory processes and reform should be elevated to Cabinet level. However, the government response declined to appoint a minister with specific responsibility for regulatory reform, pointing out that the Treasurer (*i.e.* Minister for Finance) has lead responsibility for regulatory reform under current arrangements.

### 3.2 *Formal authority of the RIA requirements*

138. The legal or policy basis upon which the RIA requirement is established varies substantially across OECD countries. The 2004 RIA inventory identified four basic forms of authority for RIA requirements, as follows:

- Established by law (as in the Czech Republic, the Republic of Korea and Mexico, as well as a majority of Australian States).
- Based on a Presidential order or decree (as in the United States).
- Based on a prime ministerial decree, or guidelines of the Prime Minister (as in Australia, Austria, France, Italy and the Netherlands).
- Based on a directive or resolution of the Cabinet or the government (as in Canada, Denmark, Finland, Germany, Ireland, Japan, New Zealand, Norway, Poland, Portugal, Sweden, and the United Kingdom).

139. The key question in this regard is whether establishment of the RIA requirement via one instrument or another will necessarily invest it with a greater degree of authority and therefore assist in maximising the degree of compliance with policy. It could be expected, *a priori*, that establishment of RIA via legislation would convey the greatest degree of authority on the policy. However, there appears to be little, if any, evidence to support this supposition. Certainly, the above list indicates that few OECD countries have chosen to adopt their RIA processes by way of legislation.

140. Notably, although Australia adopted new legislation covering aspects of regulatory process and regulatory quality assurance in 2003, the final version of this legislation did not include reference to the RIA process, as did previous drafts.<sup>39</sup> A recent report to the Australian government on "Rethinking Regulation" again recommended the inclusion of RIA requirements in the legislation, but the government has declined to take up this recommendation. One possible explanation for the limited use of legislation to establish RIA processes is that, particularly in the early years of implementation, significant changes will likely be made to the initial system design and that these may occur relatively frequently. The need to amend legislation in order to update, extend or otherwise improve existing RIA requirements could be seen as an inhibiting factor toward the achievement of continuous improvement in this regard.

141. A number of countries with long experience of RIA requirements that are based on instruments other than legislation argue that non-legislative approaches are effective in providing adequate authority to underpin the efforts of regulatory reform bodies to ensure a high level of compliance. For example, the United States believes that the authority provided to the OMB in respect of the assessment of RIA under its Presidential decree<sup>40</sup> has been sufficient to allow this mechanism to constitute one of the key guarantors of RIA quality in that country. Similarly, Australia argues that a high level of compliance has been achieved under its system, whereby the RIA policy is established via a Prime Ministerial statement.

142. It appears that the formal basis upon which RIA policies are established may be less important than other, related elements in influencing RIA quality. In particular, if there is a high level of political support at the centre of government for the RIA policy, the regulatory reform authorities tasked with its enforcement are likely to be successful in ensuring a high level of compliance.

#### **4. Specific quality assurance mechanisms**

143. Several elements in relation to RIA can be characterised as constituting quality assurance measures in the direct sense. These are the nature and extent of requirements for assessment of RIA quality by an external (to the regulatory agency) body within the administration, the nature and extent of other RIA quality assessment mechanisms, the degree of integration of RIA and public consultation processes, and the nature and extent of any requirements for *ex post* assessment of the results of *ex ante* RIA analysis.

##### **4.1. Assessment/approval of RIA by a central regulatory reform authority**

144. The 1997 OECD best practices report argued that it was necessary to “allocate RIA responsibilities carefully”. It was recommended that regulatory agencies should be primarily responsible for developing RIA, while an independent body should have responsibility for oversight and quality assurance. This oversight and quality assurance function has often been absent from countries’ RIA processes, especially when first established. However, in the last decade, the number of countries that have adopted this approach has substantially increased, while the effectiveness of the quality assurance function undertaken by the central regulatory reform authorities has also, in most cases, increased.

145. The determinants of the effectiveness of this quality assurance function are several. Three elements can be highlighted:

- The level of formal authority granted to the regulatory reform policy;
- The level of resources & expertise within the regulatory reform body; and
- The degree of “informal” authority wielded by the regulatory reform body, reflecting factors such as:
  - Whether the regulatory reform body is located at the centre of government; and
  - Whether the regulatory reform body has high-level political support within government.

146. In terms of the formal requirements for compliance with RIA, a spectrum exists between cases where regulatory agencies may be wholly responsible for the preparation of RIA without being subject to any formal external quality control and those where regulatory reform authorities have the ability to prevent regulatory proposals from going forward if they believe that RIA requirements have not been adequately met. A number of different arrangements exist between these two extremes.

147. Perhaps the strongest powers are those wielded by the Office of Management and Budget in the United States, where agencies are prevented from publishing draft rules unless OMB has determined that the benefits of the rule are likely to justify the costs. Thus, the regulatory review authority has an effective power of veto over the regulatory process.

148. The United States believes that review by the Office of Management and Budget of regulatory proposals and the accompanying RIA is essential to ensuring high-quality RIA. Moreover, it identifies the existence of strong political support for central oversight of its regulatory policy as one of the three key elements of its approach to regulatory policy, along with robust RIA processes generally and transparency and accountability, particularly through open public consultation processes.

149. In recent times, the OMB appears to have made more extensive use of its powers, as indicated by the substantial increase in recent years in the number of rules returned to agencies for further development. For example, in the first year of the George W. Bush administration, 20 rules were returned to agencies, exceeding the total number of rules returned during the eight previous years.

150. In other countries, while a review authority is required to provide an assessment of the RIA, non-compliance does not prevent the regulation from proceeding. For example, in Australia the Office of Regulation Review has, to date, only been able to notify non-compliance with RIA requirements to decision-makers, and annually publishes compliance data as a further sanction. However, a recent Government decision requires that, unless there are exceptional circumstances, a regulatory proposal with material business impacts cannot proceed to Cabinet or to another decision maker unless it has complied with the government's RIS requirements.<sup>41</sup> This would appear to be a level of authority similar to that wielded by the OMB in the United States.

151. Australia has commented that it believes the processes for review of RIA documents by the Office of Regulation Review are "quite important" to the quality of the RIA process as a whole. However, it also indicates that the level of integration of RIA into the policy process is a major contributor to overall RIA quality, stating that, in the experience of the ORR, a correlation exists between the quality of the policy-making process and the quality of the RIA. Recently announced policy changes will strengthen the role of the ORR by preventing regulatory proposals being considered by Cabinet unless the RIA has been assessed as adequate by that body and by broadening the range of grounds on which an RIA can be found to be inadequate.

152. A number of other countries have moved to increase the effectiveness of central oversight of RIA quality in recent years. For example, major changes have been made in the United Kingdom since 2003. RIA must now be "agreed" with the Cabinet Office Better Regulation Executive. Moreover, the role of the Cabinet Office Better Regulation Executive in RIA scrutiny has been supplemented through the creation of the Panel on Regulatory Accountability (see below), while the Small-Business Service also scrutinises RIA which have significant small-business impacts. The resources of the Cabinet Office Better Regulation Executive were also significantly increased in 2005, while its remit with regard to independent regulators was broadened.

153. New Zealand moved in 2002 to strengthen the role of its Regulatory Impact Analysis Unit by a requiring that the unit's comments on all RIA be included with Cabinet Submissions. Australia has recently adopted a requirement for all RIA to use a software-based "Business Cost Calculator" and, where relevant, a Small Business Compliance Costing Tool to assist in the identification and quantification of costs and to encourage greater consistency in methodological approaches taken in RIA.

#### **4.2. Other review mechanisms for RIA documents**

154. While requirements for the RIA to be assessed by an independent body within the government administration constitute the most commonly found form of quality assurance, many countries have implemented additional mechanisms for assessment and/or review of the RIA.

155. The United Kingdom has implemented several additional review mechanisms, including one that is currently at the consultation stage. As noted above, Ministers are now required to certify personally the adequacy of the RIA document. Proposals for a revised RIA process which are currently subject to public consultation would require that Departmental Chief Economists also provide a declaration regarding the evidence basis for the analysis contained in the RIA.<sup>42</sup>

156. Regulatory proposals that are likely to impose a major new burden on business are required to obtain clearance from the Panel on Regulatory Accountability, which is chaired by the Prime Minister. The Panel receives an RIA that has been agreed with the Cabinet Office Better Regulation Executive. Submission of the proposal to the Panel occurs before wider ministerial approval is sought for the proposal. According to the UK Government *“The PRA continues to reject and delay a significant proportion of regulatory proposals, where departments have not properly justified extra burdens on business.”*<sup>43</sup>

#### **4.3. Integrating RIA with public consultation**

157. Previous OECD work has shown that RIA is increasingly being integrated with public consultation processes. The data contained in the 2004 RIA inventory suggest that this trend is continuing. However, it suggests that countries differ in their approach to releasing RIA documents for consultation, while a significant number of countries still do not release RIA documents. According to the inventory:

- Countries which disclose their RIA for consultation and during legislative development include Canada, Denmark, the European Commission, Finland, Italy, Mexico, New Zealand, Norway, Poland, Sweden, Switzerland, the United Kingdom and the United States;
- Countries which disclose their RIA only in the case of major regulations or in selected cases include Japan and Portugal;
- Countries that disclose their RIA only when regulation is submitted to the Parliament, or Council of Ministers, include Australia, France, Iceland and the Netherlands; and
- Countries that do not disclose their RIA include Austria, Hungary, Ireland, Korea, Spain and Turkey.

158. Differences between countries as to the stage of the legislative process at which RIA documents are released presumably reflect different views as to the purpose of disclosing the RIA. When RIA are released at a relatively early stage in the regulatory development process, there are significant opportunities for consultation to affect the final shape of the regulation. Thus, RIA documents are being used to provide detailed information on the regulatory proposal to stakeholders and the public. Where this occurs, consulted groups are effectively providing a quality assurance mechanism in respect of the RIA, as additional information and feedback received during the consultation process will necessarily lead to reassessment and revision of the analysis. Consultation on the basis of RIA documents thus aims to obtain data and information on stakeholder attitudes and to contribute to policy development.

159. By contrast, where RIA are released at a later stage of the process, such as during Parliamentary debate on the proposed legislation, the opportunity for public feedback to effect the policy process is obviously much more limited. In such cases, it must be inferred that the purpose of the public release of RIA relates primarily to issues of transparency and accountability, rather than being focused on improving regulatory quality.

160. For many countries that release RIA late in the process, it is likely that other forms of consultation will have been conducted at earlier stages. For example, while Australia does not have a formal consultation policy at Federal government level,<sup>44</sup> some consultation will almost invariably be undertaken by regulatory agencies during the course of developing new regulatory proposals. The question of whether individual agencies have organisational guidelines outlining consultation processes also constitutes one of nine regulatory performance indicators reported in Australia. However, the nondisclosure of the analytical basis underpinning the regulatory proposal during these earlier consultations necessarily limits the ability of stakeholders to engage fully in this process and challenge regulatory proposals.

161. The New Zealand government has, since 2001, adopted a requirement that all RIA should be published on the Internet sites of the relevant departments, as well as at a central point within the Internet site of the Ministry for Economic Development. However, the timing of the publication is left to the discretion of the responsible Minister and/or the Cabinet. Therefore, publication may not occur, in some cases, until after Cabinet consideration and decision on the issue.

162. By contrast, in the United States, before agencies can issue a final regulation, they must publish a proposed rule in the *Federal Register* and make public any associated RIA. Thus, The RIA forms the basis of an open process of consultation, based on “notice and comment” procedures.

163. Aspects of the design of RIA-based consultation processes can significantly affect the degree of impact which integration with consultation processes has on RIA quality. In particular, where there are procedural requirements for comments received to be addressed explicitly by regulators, a greater degree of responsiveness is likely. However, it is also likely that a more open consultation process will be more effective in terms of RIA quality assurance than selective consultation, as the degree of transparency and accountability involved are likely to be significantly higher.

164. As noted in previous OECD work (OECD, 2002, p. 69), consultation processes are increasingly becoming more open and accessible and are also increasingly being used to support RIA development.

165. Publication of RIA documents can constitute a quality assurance mechanism even where (as in the Australian Federal context) it is adopted primarily as a transparency mechanism, rather than a vehicle for consultation *per se*. That is, while public feedback will not have a significant impact in terms of leading to revisions and improvement of the analysis in this context, consciousness of the need to defend the RIA publicly is likely to encourage regulators to achieve higher analytical standards.

#### **4.4. *Ex post review of RIA***

166. RIA, when conducted in respect of new regulation, is necessarily *ex ante* analysis and, as such, it is subject to substantial error. Requirements for *ex post* review of regulatory impacts can also have a positive impact on the quality of *ex ante* RIA. Knowledge that the RIA will be revisited within a relatively short period may act to undermine any incentives that regulators would otherwise have to manipulate the analysis in a manner which favours the case for the proposed regulation.

167. Moreover, in a more dynamic sense, *ex post* review can help to reveal systemic errors in RIA methodologies and thereby promote methodological improvements over time. Of course, such an effect requires that the results of *ex post* reviews be themselves systematically assessed and any conclusions fed back into RIA guidance.

168. *Ex post* evaluations can be of several types. Harrington (2003), proposes the following three part taxonomy:

- *Content tests* assess RIA on the basis of whether they contain the elements specified in RIA requirements and, in some cases, assess the quality of each of these elements.
- *Outcome tests* assess RIA in terms of the degree of consistency between their *ex ante* assessments of regulatory impacts and actual (*i.e.*, *ex post*) impacts.
- *Function tests* assess RIA according to their outcomes – *i.e.*, their ability to facilitate the regulatory process and produce efficient and equitable regulations.

169. A number of countries have begun to implement indicators of RIA performance that can be seen as constituting content based *ex post* assessments of RIA, within Harrington's taxonomy. The United States tracks a range of input measures in relation to RIA, and has implemented targets of ensuring that:

- Ensuring that at least 80% of economically significant rules include monetised estimates of benefits and/or costs; and
- Ensuring that 60% of economically significant rules are fully compliant with OMB Circular A-4.

170. In the United Kingdom, the rate of compliance with RIA requirements is systematically monitored and, in recent years, is claimed to be close to 100%. It is not clear, however, what tests must be passed by an RIA document for it to be judged as being compliant. The UK National Audit Office also reports on the propensity for RIA to lead to changes in regulatory proposals.

171. In Australia, annual reports are published on compliance with a set of nine Regulatory Performance Indicators. These indicators were developed in 1997 and three can be said to relate directly to the quality of RIA processes:

- The proportion of RIA that adequately addressed the question of net benefits to the community.
- The proportion of RIA that adequately justified the compliance burden imposed on business.
- The proportion of RIA that included an adequate statement of consultation.

172. Reported compliance has generally been high, reaching 91% for all three indicators in 2003/04. However, despite this high level of reported compliance there has been continuing disquiet over regulatory quality issues, leading to the announcement of substantial enhancements to RIA and related regulatory quality requirements and processes in August 2006. Thus, the stringency of Australian RIA requirements in these areas is currently being increased, while the range of indicators collected is also to be expanded (Government of Australia, 2006, pp.75-82).

173. In addition to these indicator based approaches, some more substantive assessments of RIA content have also been implemented in recent years. A significant example is found in the United Kingdom. Since 2000, the National Audit Office has published an annual “Evaluation of Regulatory Impact Assessments” which provides a detailed review of RIA performance, based on a sample of the RIA published in the previous year. Particularly given the timing involved, there is little opportunity for outcome testing to be undertaken in this context. However, this review programme is considered to be an effective means of identifying significant issues in RIA practice and allowing action to be taken to improve the quality of subsequent RIA. This form of assessment has a high level of independence as the NAO has statutory independence from the government and, moreover, it has no responsibility for the initial assessment of the adequacy of RIA.

174. In some cases, a parliamentary committee reviews RIA documents and can seek further information regarding the analysis. This function also constitutes a content based form of *ex post* review of RIA. The function represents a slight expansion of the traditional function of Parliamentary scrutiny committees, given that parliament generally retains a power to disallow delegated legislation (*i.e.* a legislative instrument made in reliance on an authority delegated by the Parliament). For example, in Australia the Senate Standing Committee on Regulations and Ordinances reviews all disallowable instruments and may take into consideration the adequacy of the RIA when deciding whether to disallow an instrument.

175. Where a Parliamentary scrutiny committee reviews the RIA documentation, it is effectively bringing this aspect of the procedural requirements for regulation making within the scope of its scrutiny function. Where an RIA document is found to be seriously inadequate, a recommendation for the disallowance of the regulation may result. In this respect, a Parliamentary committee unsurprisingly wields significantly greater authority than does a regulatory review body within the administration.

176. A further form of content based *ex post* review is provided by the courts, which can constitute an important check on the use of regulatory power in some countries (notably the United States). Again, a finding that the RIA is substantially inadequate has the potential to be deemed to be a material procedural inadequacy and lead to the regulation being invalidated. Thus, the prospect of court action can constitute an important quality assurance mechanism for RIA.

177. There is, as yet, little evidence of the systematic adoption of *ex post* assessments of the *ex ante* predictions about probable regulatory impacts made in RIA documents – that is, of “outcome testing”, in Harrington’s terms. In the UK, the National Audit Office has recently drawn attention to this issue, commenting that “*ex post* evaluation of new regulations is largely neglected, as departmental evaluations are either embryonic or isolated.” (NAO, 2006, p. 9). It does note, however, that at least one department is currently considering how it can undertake *ex post* evaluation of its regulation and has recently commissioned research in this area.

178. In Australia, the Government has recently accepted a recommendation of the *Rethinking Regulation*<sup>45</sup> report that a selective programme of *ex post* reviews of regulation should be commenced one to two years after implementation, with the focus to be placed on those regulations exempted from the RIS process on urgency grounds and those in respect of which the RIS analysis revealed substantial uncertainty about either the extent of compliance burdens or the extent of net benefits. The report also recommended replacement of current 10 year sunseting requirements with a very short (five yearly) “sunseting” cycle, which would effectively require *ex post* assessments to be conducted at these intervals in the context of developing new RIA for replacement regulations. However, this recommendation was rejected.

179. It is notable that these recommendations have been made in the context in which RIA documents are already required to include an “implementation and review” section, which specifies what review processes will be followed in respect of the regulatory proposal. Similarly, the comments of the UK NAO are made in the context in which each RIA is already required to state how the effectiveness of the regulation is to be measured, and when (OECD, 2004, p. 9). This suggests that, even where systematic provision is being made for *ex post* evaluation to be conducted, significant difficulties with compliance are encountered in practice. In turn, this may suggest the need for constant reporting of the results of such evaluations.

180. One notable example of outcome testing conducted in respect of RIA was that published by Harrington *et al.* (2001), which concluded that the expected costs of regulatory proposals were systematically overestimated in RIA. However, while this result provided a degree of support to RIA critics who frequently argue that this is the case, Harrington's analysis also showed that the expected benefits of regulation were systematically overstated. This degree of overstatement of expected benefits was so great that, considered as a whole, the RIA showed no systematic bias in terms of the estimation of unit costs (*i.e.* cost per unit of benefit achieved).<sup>46</sup>

181. The RIA inventory lists a number of *ex post* review mechanisms currently in use. This list shows considerable variation in the approach to review and in the extent to which these *ex post* review requirements are specific to regulation. Some examples of particular relevance to regulation are:

- In Denmark, the government chooses approximately 15 laws each year that will be reviewed three years after implementation.
- Germany has created the concept of a retrospective RIA, which should be completed once operational experience is available with the new regulation.
- In the EC, services are asked to provide plans for monitoring and evaluation of proposals, while proposals should themselves include review clauses where appropriate, particularly in areas subject to rapid technological change.

182. Function tests – that is, systematic *ex post* assessments of the contribution of RIA to the efficiency and effectiveness of regulation remain almost unknown. However, it should be noted that the United States has attempted to calculate the aggregate benefits and costs of major regulations (*i.e.* those requiring RIA) over the last 20 years. The results indicate that significant net benefits were predicted to come about as a result of new major regulations in each year. However, the very wide year to year variation recorded in estimates of average benefits, in particular, tends to underscore the difficulty of this task and may reflect year on year differences in the proportion of benefits that could be quantified, as much as actual differences in regulatory performance.<sup>47</sup>

## 5. Conclusion

183. This paper identifies substantial policy activity currently being undertaken in respect of RIA processes and substantive requirements in a range of OECD Member countries. Much of the development activity in respect of RIA is occurring in countries in which there is very lengthy experience with RIA. This is consistent with the view that policy learning in relation to RIA is a long-term process and also suggests that there is a continuing political will to enhance RIA requirements and improve its contribution to regulatory quality among early adopting countries.

184. Development appears to be occurring at both the level of technical requirements for the completion of RIA and at the procedural level. In a number of areas, substantial challenges continue to exist and significant further work is required.

185. It is clear that RIA is too often commenced too late in the policy process to be able to have a significant effect on outcomes. While there is some evidence that the adoption of “2 stage” RIA requirements encourages earlier commencement of the process – with consequent gains in effectiveness – few jurisdictions have adopted this approach. There has been limited success in identifying other effective means of improving practice in this area. *Systematically ensuring that RIA is commenced early in the process remains a priority.*

186. Substantial gaps remain in terms of the completeness and the appropriateness of the methodological guidance made available on RIA. There is a lack of clear and transparent rules regarding acceptable RIA methodologies. While there has been a significant increase in the number of countries adopting a general commitment to the use of BCA as the basis of RIA, little seems to have been done, in most cases, to take account of the substantial technical literature on this issue, *to lay out clear methodological expectations and to provide comprehensive and well considered guidance to RIA authors.*

187. This may affect the quality of RIA in a range of areas, including the treatment of risk, dealing with the valuation of a statistical life, discount rates and the use of sensitivity analysis. A more substantial review of country practices in this area, and of underlying policy views, would be a useful first step toward the development of guidance on best practices in the use of BCA in the specific context of RIA. Acting to maximise the quality of quantitative RIA analysis is also an essential underpinning for recent and continuing efforts to better integrate quantitative and qualitative analysis and thereby provide more policy-relevant advice.

188. Moving beyond the confines of BCA, there is also a need for further research and discussion of the use of other types of analytical methods, including macroeconomic approaches or general equilibrium methods and the benefits and risks associated with the trend toward adopting these kinds of analysis.

189. The loss of policy coherence is also an important risk identified in relation to recent RIA trends. This is due to the trend toward a proliferation of requirements for partial impact analyses, focusing on the impacts of regulatory proposals on specific groups in society. While there are possible political gains from this trend, including increasing the acceptability of the RIA to some groups, strategies are needed to integrate all the impact assessments from a whole-of-government perspective, ensuring policy coherence.

190. The targeted nature of RIA means that officials in most regulatory agencies will inevitably have limited opportunities to conduct RIA. In a context of rising expectations as to the sophistication of RIA analysis, this may have internal implications in terms of the management of these agencies, including the need for internal or external expert groups able to provide these services. This also needs to be accompanied by cultural change, to promote an understanding of the purpose of RIA and its contribution to good policy processes.

191. Wider publication of RIA documents may also be leading to better exchange of information within the administration on RIA best practices, analytical approaches and data collection methodologies and could potentially constitute an important means of contributing to improve future RIA quality. Recent moves in at least one country to establish an RIA network to facilitate direct exchanges of information between regulators may further enhance this effect.

192. In sum, RIA continues to represent a policy priority in a wide range of OECD member countries as well as a fundamental tool in regulatory policy. However, the latest evidence again underlines the fact that the development of a best practice system of RIA is necessarily a long-running task and indicates that much remains to be done, even in countries with the longest established RIA processes, if this tool is to achieve its potential within the wider context of regulatory policy as well as to cope with an ever changing policy environment.

## NOTES

1. An important locus of regulatory decision-making in Australia is that of “Ministerial Councils”, through which nationally harmonised regulatory standards are developed in areas that fall largely or wholly within the responsibility of State governments. RIA conducted in respect of proposals brought before Ministerial Councils are subject to a two-stage process. See [www.pc.gov.au/orr/reports/external/coag/index.html](http://www.pc.gov.au/orr/reports/external/coag/index.html).
2. “Two stage” RIA as discussed here is distinguished from models such as those of the Netherlands and the European Commission, in which a preliminary RIA is prepared, followed by a full RIA. The Australian process, used as an example of a “two stage” RIA involves two complete RIA documents being prepared at different stages of the policy process.
3. *Regulatory Impact Assessments and Sustainable Development*. Briefing for the Parliamentary Environmental Audit Committee, 22 May 2006. National Audit Office. London, p. 2.
4. Deighton-Smith, R. *Regulatory Impact Assessment in Australia: A Survey of Twenty Years of RIA Implementation* (p. 8). In *Regulatory Impact Analysis: Toward Better Regulation?* Edward Elgar, London, 2006 (forthcoming). Statistic on RIA and regulatory change from *Regulation and Its Review 2004-05*. Office of Regulation Review. See: [www.pc.gov.au/orr](http://www.pc.gov.au/orr).
5. As noted below, the number of RIS prepared in the United States and in Australia is broadly similar. Despite this, approximately 10 times as many rules are made in the US, with around 3500 rules being made annually (OECD, 2002, p. 132) compared with 341 rules made by the Australian government in 2005.
6. That is, approximately 100 rules pass the threshold of imposing \$100 million per annum in costs and therefore require the completion of quantitative benefits/cost analysis. In addition, OMB reviews approximately another 500 rules annually and is required to satisfy itself that the benefits of these rules are likely to justify the costs.
7. A requirement for a full BCA can constitute a belated response to a proliferation of requirements for partial analyses, as occurred in the European Commission context in 2004. See *Impact Assessment: Next Steps* Commission of the European Communities, Commission Staff Working Paper, October 2004. SEC(2004)1377.
8. That said, the Ministries of Economic Affairs, Environment and Justice act cooperatively in forming the Proposed Legislation Desk, which scrutinises new regulatory proposals to establish whether the relevant tests have been conducted adequately. While employees of each ministry are involved in the assessment of only one test, a single opinion will ultimately be provided on the half of the Proposed Legislation Desk as a whole.
9. Including the Australian, European Commission and Irish RIA guidance documents.
10. Cited in Kopp *et. al.* (1997).
11. Plumbing (Water and Energy Savings) Regulations 2004 (Victoria). RIA available on request from Plumbing Industry Commission [www.pic.vic.gov.au](http://www.pic.vic.gov.au). A brief discussion of the methodological failings of the RIA is also available at [www.ipa.org.au/files/MORAN%20Housing%20speech%20July%202005.pdf](http://www.ipa.org.au/files/MORAN%20Housing%20speech%20July%202005.pdf)

12. Draft guidance documents on integrating competition policy analysis into RIA were considered at a meeting of the OECD Competition Policy Working Party No.2 in June 2006. See DAF/COMP/WP2(2006)4 and DAF/COMP/WP2(2006)5. The UK has recently issued revised guidance on this issue for use by RIA authors.
13. Deighton-Smith, R. *Regulatory Impact Analysis in Australia: A Survey of Twenty Years of RIA Implementation*, in *Regulatory Impact Analysis: Toward Better Regulation?* Edward Elgar, London, 2006 (forthcoming). The 2001 survey was sample based and related to RIA prepared under the Council of Australian Governments requirements. The Victorian data relate to 2004-05 and 2005-06 and are comprehensive.
14. It should be noted that simple comparisons of the proportion of RIA including quantification of benefits and costs across jurisdictions are likely to be misleading due to the different RIA thresholds applied. In Australia, RIA guidance states that the extent of quantification should be commensurate with the size of the regulatory impacts being assessed. However, Australia's RIA requirement captures regulations of a significantly more minor nature than those covered by the US RIA requirement, for example.
15. See *Victorian Guide to Regulation*. [www.vcec.vic.gov.au](http://www.vcec.vic.gov.au). For general information on this tool, see, e.g: [www.balancedscorecard.org/basics/bsc1.html](http://www.balancedscorecard.org/basics/bsc1.html).
16. *Handbook on Benefit-Cost Analysis*. Department of Finance and Administration, Government of Australia, January 2006. Available at: [www.finance.gov.au](http://www.finance.gov.au).
17. New RIA guidance is expected to be adopted shortly. The current draft is much abbreviated and would not be expected to include technical detail of this sort. However, it is anticipated that further technical guidance will be developed to supplement this general guide over time.
18. Consulting and Audit Canada, August 1995, p 80. See: [www.pco-bcp.gc.ca/raoics-srdc/docs/publications/CostBenefitGuideforRegul/CostBenefitGuideforRegul\\_e.pdf](http://www.pco-bcp.gc.ca/raoics-srdc/docs/publications/CostBenefitGuideforRegul/CostBenefitGuideforRegul_e.pdf).
19. For example, Health Canada's *Handbook on Health Impact Assessment* (2004) presents value of statistical life estimates drawn from Viscusi's research. It cites valuations of a statistical life (presented in 2000 Canadian dollars) ranging between \$1.0 million and \$22.6 million, and having a median value of \$6.8 million and a mean value of \$8.4 million.
20. SEC(2005)791, 15 June 2005, see Annexes, p. 38.
21. Circular A4 (September 17, 2003) to Heads of all Regulatory Agencies. *Regulatory Analysis*. Office of Management and Budget. See pp. 9-10.
22. See OECD (1997), *op. cit.*, pp. 223-4.
23. A recent development in Australia is a policy announcement that failure to conduct adequate risk assessment will, formally, constitute grounds for assessing and RIA as inadequate.
24. *Reducing Risks, Protecting People: HSE'S Decision-Making Process*. Health and Safety Executive (United Kingdom), 2001, pp. 44-45.
25. The United States RIA guidance document is something of an exception in this regard.
26. See [www.brc.gov.uk/work\\_programme/](http://www.brc.gov.uk/work_programme/)
27. See Dutch RIA manual, p. 2, (English edition).

28. Majone notes that 11 different definitions of the principle have been identified, even within the context of German environmental law, where it finds its genesis.
29. *Regulatory Analysis*. OMB Circular A-4, September 2003.
30. The Network currently consists of the UK, Norway, Sweden, Denmark, Belgium, The Netherlands, Poland, France, Hungary, Italy, the Czech Republic and Estonia. See [www.administrative-burdens.com](http://www.administrative-burdens.com).
31. For information on the Australian Business Cost Calculator, See: [www.industry.gov.au/content/itrinternet/cmscontent.cfm?objectid=BA9E0CA8-D420-DD1E-84CB334C068AFE94&searchID=168216](http://www.industry.gov.au/content/itrinternet/cmscontent.cfm?objectid=BA9E0CA8-D420-DD1E-84CB334C068AFE94&searchID=168216)
32. See [www.finance.gov.ie/CSTC/viewdoc.asp?fn=/CSTC/CSTDCdocs/RegulatoryImpactAnalysis.htm](http://www.finance.gov.ie/CSTC/viewdoc.asp?fn=/CSTC/CSTDCdocs/RegulatoryImpactAnalysis.htm).
33. For details see: [www.treasurer.gov.au/tsr/content/pressreleases/2006/088.asp](http://www.treasurer.gov.au/tsr/content/pressreleases/2006/088.asp).
34. Jacobs identifies Ireland, New Zealand and Sweden as other examples.
35. See *Regulatory Reform in the Netherlands*. OECD, Paris, 1999.
36. Yet another separate subsection of the ORR is to provide technical advice on the use of the, now mandatory "Business Cost Calculator".
37. Another indicator of the extent of political support for the RIA process as a whole in the UK is found in the fact that the foreword to the current RIA consultation document is provided by a Cabinet Office Minister.
38. The Office of Regulation Review forms part of the independent Productivity Commission. See [www.pc.gov.au](http://www.pc.gov.au).
39. See the *Legislative Instruments Act 2003*. A recent report to the Australian government on "Rethinking Regulation" again recommended the inclusion of RIA requirements in the legislation, but the government has declined to take up this recommendation.
40. Under Executive Order 12866, agencies cannot publish draft rules until OMB has been satisfied that the benefits of an action are likely to justify the costs.
41. In addition, the range of grounds on which an RIA can be found to be inadequate has been broadened as part of these changes.
42. *The Tools to Deliver Better Regulation: Revising the Regulatory Impact Assessment – A Consultation*. Cabinet Office Better Regulation Executive. Government of the United Kingdom, July 2006.
43. Budget 2005, p. 48. UK Government.
44. The Australian government has recently announced (15 August 2006) that it will develop a "whole-of-government" policy on consultation which will include a business consultation web site. It has also committed itself to releasing Green Papers for consultation in respect of major regulatory initiatives. However, the issue of whether RIA will be integrated with these enhanced consultation processes has not been addressed in the recent announcement.
45. *Rethinking Regulation*. Report of the Task Force on Reducing Regulatory Burdens on Business, January 2006. See [www.regulationtaskforce.gov.au](http://www.regulationtaskforce.gov.au).
46. Cited in Harrington (2004).
47. For example, OMB data suggest that the aggregate benefits associated with new major rules adopted in 2003 was around \$4 billion, while the equivalent figure for 2004 was approximately \$53 billion.

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