



# **SCOPE of RIA**

Building capacity for RIA in South Africa

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# Introducing RIA in South Africa: 2005

- SBP-led consortium commissioned by National Treasury/Presidency to investigate & report on introducing RIA in South Africa
  - advised by UK Better Regulation Executive
- Three phases:
  - Background research on existing regulatory system & international RIA models
  - Pilot RIAs in dti and DEAT
  - Developed RIA template & institutional & procedural options for implementation



## Main findings of 2005 study

- SA regulatory process already includes many of the practices associated with RIA
- RIA can help to further the government's economic growth, pro-poor & transformation objectives
- RIA could be introduced as a logical extension of existing Cabinet Memo process
- RIA is necessary to close certain gaps in existing regulatory system



# RIA can strengthen the regulatory process

- Weaknesses in current system:
  - Inadequate consideration of alternative options
  - Lack of costing at early stage in the process
  - Lack of systematic procedures to ensure effective consultation across departments early in the process
  - Need for better information-gathering as part of stakeholder consultation
  - Limited systematic monitoring and evaluation
  - Failure to assess possible impacts of amendments made by State Law Advisers or after public consultation
  - Lack of capacity in Portfolio Committees
- RIA can help to close these gaps



# RIA instrument specific to SA

- RIA template and draft guidelines were developed
  - tested in pilots
- Recognised South African priorities & policy objectives
  - noted that further consultation with departments was necessary to develop ownership of instruments & ensure relevance across different policy areas



## RIA template – key features

- Purpose and intended outcome of measure
- Risk assessment in relation to problem
- Options
  - Risks and benefits for each
  - Compliance costs for business & wider society
  - Implementation costs of each – admin, indirect
- Enforcement mechanisms
- Monitoring & Review
- Record of consultation
- Recommended option



## **Criteria to be addressed for each option – impact on:**

- Economic growth & development
- Competition
- Small business
- BEE
- Employment
- Distribution & equity
- Geographic/regional distribution
- Poverty reduction
- Income distribution
- Racial equity
- Vulnerable groups
- Health & environment



## The threshold for RIA?

- Suggested that RIA be applied to ‘significant’ primary & secondary legislation
  - definition of ‘significance’ requires further discussion
- Strongly guided model: Centre could set detailed criteria for determining ‘significance’
- Lightly guided model: Departments could interpret general principles established by centre





## The level of detail?

- Level of detail should be appropriate to:
  - different levels of RIA
  - likely significance of impacts
- Problem of available data
- But even 'broad-brush' assessment is better than no systematic assessment



# Three levels of RIA

- RIA is typically conducted at three points in the policy process
- RIA statements at increasing levels of detail/complexity

## **Scoping RIA**

- initial review, exploring possible options for achieving a policy objective, & briefly identifying potential costs & benefits

## **Mid-level RIA**

- fuller study of costs & benefits of different options, to inform choice of option

## **Final RIA**

- preferred option: detailed analysis of costs & benefits
- accompanies proposal to parliament




## Three key issues

- Framework legislation poses problems for RIA – because of the lack of detail
- Secondary legislation & subordinate regulations must be ‘flagged’ for RIA if likely to have significant impacts
- Significant amendments to Bills may require further RIA

# Suggested stages of law making process for primary legislation

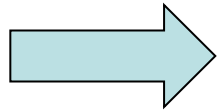


1. Idea for regulation first mooted
2. Assess need for RIA against internal/external criteria ('significance test')
3. If RIA required, scoping RIA prepared  
 initial information gathering, consultations, options identified
4. Scoping RIA sent to central function (threshold decision) for comment



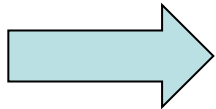
## **Suggested stages of law making process for primary legislation (2)**

6a. Framework legislation: scoping RIA, with subordinate legislation 'flagged'



Minister, & cabinet process

6b. Non-framework legislation: further RIA




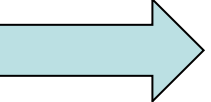
further research & consultation on options

7. Decision to regulate taken

8. Mid-level RIA prepared



# Suggested stages of law making process for primary legislation (3)

- 9. Minister signs off on draft bill with preferred option
- 10. Cabinet process, central function sends comments on mid-level RIA to responsible Cabinet Committee
- 11a. Cabinet approves draft bill with/without amendments  State Law Advisers
- 11b. Cabinet rejects draft bill with/without instruction to rework  Department

# **Suggested stages of law making process for primary legislation (4)**

12. Certification of draft Bill by State Law Advisers

13. Full draft bill published in Government Gazette

14. Amendments in response to public comments

15. Final RIA on preferred option before submission to Parliament

16. Significant amendments: consider further RIA if appropriate



# Capacity requirements

- Departmental capacity – varies across departments – to be built over time
- Need for tools, guidance, support
- RIA requires:
  - specific technical skills
  - understanding of broad range of possible impacts
  - readiness to consider *options*
- Need time & will to consult *effectively*
  - within & across departments
  - with external stakeholders





# Raise standards over time

- Can't expect to introduce high-level, technically complex RIA system at the outset
- Build on & strengthen current practice, more disciplined approach to options identification & consultation
- Raise standards over time as capacity develops & departments become familiar with the technique
- Mid term objective: RIA integrated in departments' approach to law-making



# Implementation challenges: Information

- Departments will encounter data gaps
- Need to identify strategies for collecting data efficiently and cost-effectively - from earliest stage
  - economic data not gathered sufficiently during policy research that typically occurs when developing new regulation
- Organised business is currently unable to rapidly assess compliance costs
  - need statistically valid methods to gather info from industries of different sizes
- Standardised methodologies are needed to enable consistency in economic analysis and other measures



# Economic analysis

- **Cost benefit analysis**
  - appropriate where the benefits of proposed regulation can be expressed in monetary units
- **Cost effectiveness analysis**
  - best used where benefits can't be expressed in monetary terms e.g. health and safety regulation/ regulation aimed at promoting human rights



# RIA needs a holistic approach

- CBA is useful means of understanding likely costs and benefits in quantitative terms
- BUT it is only one element of RIA
- Qualitative analysis of 'soft' issues is equally important
- Need to conceive RIA in holistic terms – taking into account value of consultative process, appropriate weighting of priorities etc



# Pilots: 2005

## An illustrative example

- DEAT and DTI offered legislation for pilot – both framework bills
- Scope vast, detail limited – difficult to anticipate likely impacts
- Decided to focus on single provision in each case



# DTI Pilot: Consumer Protection Bill

- Draft trade descriptions and environmental labeling provision
- Extended mandatory trade descriptions to *all* goods – motor cars/paint/tomato sauce
- Aimed to give consumers adequate info to make informed choices, protect from hazards, enable choice about environmental friendliness



# Compulsory labeling on all products to reflect:

- Number, quantity, measure weight or gauge of any goods
- Name of the manufacturer or producer of any goods
- Place or country of origin of any goods;
- Mode of manufacturing or producing any goods
- Ingredients or material of which any goods consist/are made
- Any goods being the subject of any patent, privilege or copyright
- Additional environmental indicators
  - Genetically modified organisms
  - Impact on endangered species or habitats
  - Hazardous compounds and radiation
  - Energy use
  - Special waste handling requirements



# Methodology

- Review of existing documentation incl. consultation responses
- Targeted interviews with industry stakeholders
- Expert interviews
- Economic modelling
- Evaluation against guidelines criteria





## Paint sector pilot

- Provision applied across all goods in economy - to calculate likely impact, RIA was applied to a single sub-sector
- Paint sector
  - spread of large, medium, small firms
  - health and safety considerations
  - was not already subject to mandatory labeling requirements



# Identification of options

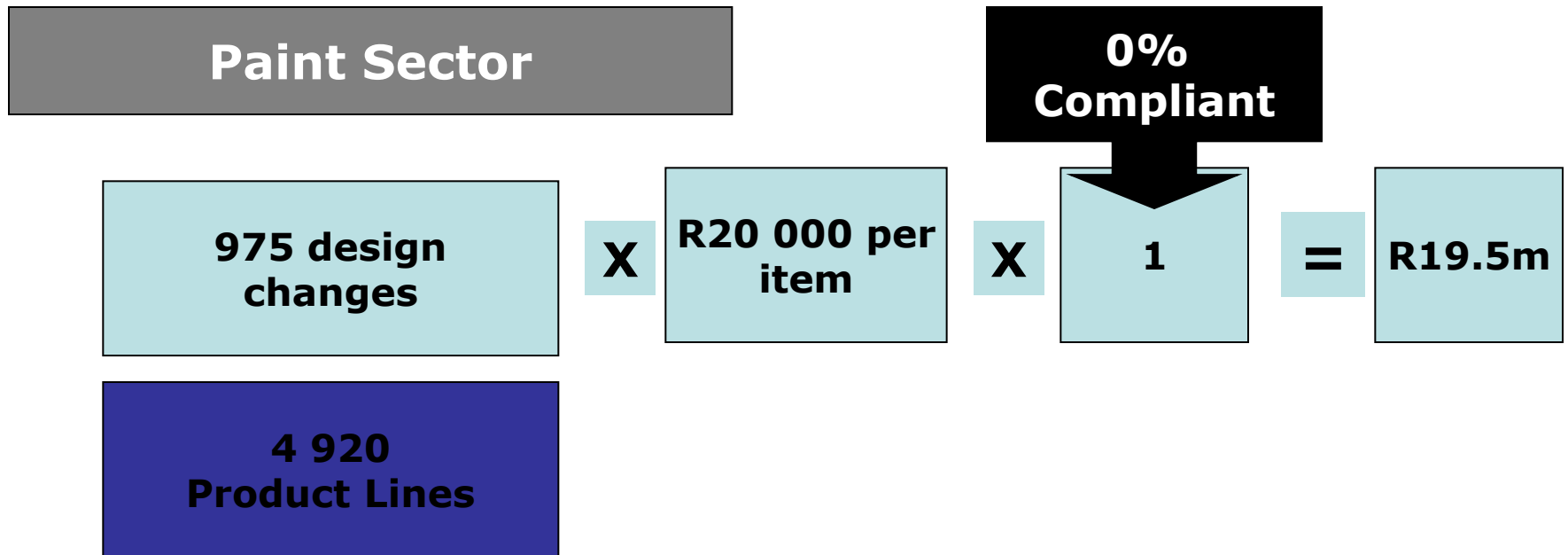
- 3 options
  - Do nothing / rely on existing legislative framework
  - Promote industry self-regulation
  - Comprehensive re-regulation setting mandatory minimum standards
    - Route favoured by DTI & reflected in Draft Bill
    - Not supported by consultation responses



## Assessing cost of option 3

- Compliance costs
  - scope (all products)
  - initial changeover costs
  - ongoing compliance costs
- Implementation costs
  - insignificant: primarily due to costs of managing exemptions

# Compliance costs: Paint sector



- Paint sector compliance costs
  - Sector interviews and analysis

# Compliance costs: Paint sector

- Paint sector
  - Costs significant
  - Disproportionate impact on small business

	Turnover R million	Firms No.	Product lines No.	Design Changes	Re- labelling R/label	Costs R million	% of turnover
Industry leader	1,071	1	1,300	200	20,000	4.00	0.37%
Large firm 2	357	1	800	150	20,000	3.00	0.84%
Medium firm 3	280	1	900	100	20,000	2.00	0.71%
Small/medium firm 3	100	1	60	60	20,000	1.20	1.20%
Other medium	650	6	360	90	20,000	1.80	0.28%
Other small	220	300	1,500	375	20,000	7.50	3.42%
<b>Total</b>	<b>2,678</b>	<b>310</b>	<b>4,920</b>	<b>975</b>		<b>19.5</b>	<b>0.73%</b>



## Extrapolating to economy as a whole

- Assumption - other sectors have only 40% of costs of paint sector
- Changeover cost = R479m
- Annual cost = R96m
- Cost to small business proportionately greater than to large firms
- Could render some small operations non-viable



# Likely impacts

- Benefits impossible to quantify at the level of detail available & with time and resources available
- Some benefits relatively amenable to quantification
  - Reduced exposure to allergens - would depend on specific labelling requirements & on the exemptions
  - Public goods benefits associated with energy efficient labels
- Others more complex
  - Ability of consumers to make ethical choices
  - Require new survey based research on consumer willingness to pay for ethical consumption



# Potential distribution of benefits

## **Huge disparities in total annual expenditure:**

- Households in bottom expenditure quintile accounted for 3% of total
- Households in second lowest quintile accounted for 4% of total
- Households in top expenditure quintile accounted for 64% of total
- Households in lowest expenditure quintile spent 57% of total annual average expenditure on food (already subject to labeling requirements)
- Increase in amount of money available for expenditure correlates to decrease in proportion of expenditure on food

## **Implication:**

- Untargeted labelling provisions have very different benefits across income groups
- Benefits would accrue in proportion to consumer patterns - spend more benefit more
- Lower income brackets derive least benefit





# Weighing costs and benefits of options

## 1. 'Do nothing

- need to look at enforcement mechanisms, capacity to implement current legislation

## 2. Self-regulation

- lower compliance cost, targeted by industries. Risk worst offenders ignore requirement

## 3. Regulate?

- very large compliance costs, limited public benefit



## RIA Recommendation

- Further refinement of options 2 and/or 3 needed
- Generalise relevant sections to make broad provision for regulatory control of product labeling
- Extend to product types on targeted basis
- Consider specific initiatives to protect poor consumers, focused on main expenditure items i.e. food, energy, fuel



# RIA Reports

Available on SBP website:

[www.sbp.org.za](http://www.sbp.org.za)



Thank you