

Department of Treasury and Finance



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RIA Benchmarking Study
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Attention: Jill Irvine

RIA Benchmarking Study - Response to Issues Paper

Thank you for the opportunity to provide a submission to the Productivity Commission's study to benchmark the efficiency and quality of Regulatory Impact Analysis processes as at January 2012.

I provide the following information in respect of the issues presented in the Issues Paper, which sets out the arrangements that applied in January 2012. These arrangements are always subject to change.

Tasmanian RIS process

Under Tasmania's gatekeeper arrangements, the Economic Reform Unit within the Department of Treasury and Finance is responsible for the review of primary legislation under the Government's Legislation Review Program and the review of subordinate legislation under the *Subordinate Legislation Act 1992*. Senior staff within the Economic Reform Unit have delegated authority to issue certificates under the Act.

The objective of the Legislation Review Program is to ensure that primary legislation is prepared in accordance with the *National Competition Policy Competition Principles Agreement*. In particular, the Economic Reform Unit assesses proposed legislation against the criteria that legislation must not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs and that the objectives of the legislation can only be achieved by restricting competition.

The Subordinate Legislation Act requires that subordinate legislation is necessary, effective and efficient and ensures that subordinate legislation is periodically reviewed by providing for automatic repeal after 10 years. While the sunseting of regulations is often viewed as administratively onerous (particular where considerable review of the legislation has been undertaken within the 10 year period), it is generally considered that sunseting is very beneficial and has led to improved regulatory outcomes at the end of the 10 year period. In some cases regulations have not been remade at the end of the 10 year period. A RIS is required where Treasury has determined that the proposed subordinate legislation will impose a significant burden, cost or disadvantage on the community.

Where a RIS is required under the LRP and Subordinate Legislation Act, a public consultation process must be undertaken and submissions are sought. The relevant agency will take account of any issues raised through the public consultation process.

In practice, there are typically very few submissions made in response to a RIS. For example, a RIS was prepared in 2007 on proposed regulations that set the wholesale energy price allowance for electricity tariffs. Although the effect of the regulations was to be a sizeable increase in these tariffs, no submissions were received.

Treasury is not required to undertake an ex-poste review of primary legislation that has not been assessed under the gatekeeper process as complying with the LRP.

The RIS process in policy development

Under the LRP, all proposals involving primary legislation must be assessed by Treasury for their impact on competition prior to the policy being presented to Cabinet for a decision. Under the LRP, the Cabinet decision on the policy objective is almost always made before the preparation of the RIS, though Cabinet is advised if the proposal contains a major restriction on competition or significant impact on competition and that a RIS is needed.

The final Bill must also be endorsed by Treasury prior to being presented to Cabinet for approval to be tabled in Parliament. If a RIS is required, the RIS, once approved by Treasury and released for consultation, must be presented to Cabinet when it considers the final Bill for tabling.

This is different to the process under the Subordinate Legislation Act where the assessment of the impacts of the proposed subordinate legislation by Treasury is not required until after the policy decision has been made by the relevant Minister and the legislation has been drafted. This means that the assessment of costs and benefits of the proposed legislation is not done until after the initial policy decision has been made.

However, in approximately 25 per cent of cases, the agency will seek in-principle advice from Treasury prior to drafting the legislation to determine whether proposed regulations impose a significant burden cost or disadvantage on a sector of the public and, therefore, require a RIS. Even where this in-principle advice is requested, a policy position has often already been formed and ministerial approval to commence drafting may have been given.

As a result, the formal RIS process may be viewed as a means of setting out the rationale for the proposed policy decision, against viable alternatives.

The early stages of policy development will typically involve defining and scoping the problem, analysing alternative options, which in some cases can include an examination on non-regulatory options, analysis of costs and benefits and undertaking consultation with stakeholders. As these processes occur regardless of whether a formal RIS is required, if a RIS is subsequently required, this could duplicate work already undertaken.

RIS influence in policy outcomes

A RIS is often prepared after an initial policy decision has been made. The preparation of, and consultation on, a RIS usually does not result in major changes in policy or to the supporting legislation. Generally only minor amendments to the subordinate legislation are made following the RIS consultation process, which usually relate to mechanical or procedural matters. In some cases, however, the RIS process can result in an outcome that is different from the initial policy decision.

Where the principles underpinning the RIS process have been absorbed into the policy development process, often matters covered by a RIS, including an examination of alternatives, risks and consultation strategies, are included in preliminary documentation that is prepared for the decision maker. In addition, consultation with stakeholders has usually occurred before the agency comes to Treasury for an initial assessment. Therefore, it is often a result of the processes within agencies that significant changes are made to the intended policy, rather than as a result of consultation on a RIS.

Constraints impacting on the quality of RISs

Resourcing and expertise of staff within agencies will affect the quality of RISs produced by agencies. Some larger agencies have dedicated teams experienced in providing policy analysis and advice and subsequently preparing legislation. Other agencies rely on project officers to perform these tasks as part of the set of responsibilities associated with the particular project they are working on. For these agencies particularly, the relevant staff are almost always not economists and may have little experience in the process of developing a RIS, specifically in areas such as cost-benefit analysis. This can potentially be a significant issue for statutory bodies such as Marine and Safety Tasmania and Forestry Tasmania that are not government departments but are responsible for the administration of some legislation.

For many agencies, there can be a high level of staff turnover in the positions that are directly involved in the RIS process. Against this, however, some agencies have, or are in the process of developing, processes and procedures that capture corporate knowledge in this area.

A further constraint on the quality of RISs is the availability of data, which can affect the ability to undertake a detailed assessment of social, economic and environmental impacts of legislation. It is often the case that data are only available at a national or state level, such that regional and local impacts are more difficult to assess. Where possible, agencies adopt methodologies and draw on data from RISs prepared in other jurisdictions.

RIS training and guideline material

The Economic Reform Unit does not provide regular formal training sessions to agencies. However, the ERU has effective working relationships with officers within the government agencies. Each agency has a designated contact officer within the ERU who is responsible for undertaking an analysis of that agency's proposed legislation. The ERU often meet with agency officers, encouraging early engagement in the policy development process through informal discussions and communication. This assists to promote good regulatory outcomes for the Tasmanian community.

The ERU publish guidance material to assist agencies understand their obligations under the LRP and Subordinate Legislation Act, as well as what is required to be included in a RIS and public consultation requirements.

Thank you for the opportunity to comment on the Issues Paper.

Yours sincerely

Martin Wallace
Secretary