



Australian Government

Department of the Prime Minister and Cabinet

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BARTON

Mr Gerry McNally
Secretary
Senate Select Committee on Red Tape
PO Box 6100
Parliament House
Canberra ACT 2600

by email

Dear Mr McNally

Thank you for your email dated 18 September 2018 to Dr Martin Parkinson AC PSM, Secretary of the Department of the Prime Minister and Cabinet (PM&C), inviting a submission to the Red Tape Committee's inquiry into policy and process to limit and reduce red tape.

PM&C, through the Office of Best Practice Regulation (OBPR) oversees the Government's Regulatory Impact Analysis (RIA) process.

RIA encourages an evidence-based approach to policy development by ensuring that a number of viable options for addressing a problem have been analysed, and that stakeholder consultation informs that analysis. The RIA process helps to avoid the imposition of unnecessary red tape. RIA undertaken during policy development is summarised in a Regulation Impact Statement (RIS), and it is the RIS that is used to inform decision makers. Agencies are responsible for preparing RISs.

As part of the RIS process, agencies are required to quantify the impact on regulatory burden of the proposed regulation. For significant proposals, these costings need to be agreed with the OBPR. All changes in regulatory burden are reported to the Department of Jobs and Small Business, which administers the Government's commitment to reduce red tape.

The OBPR has a dual role of assisting agencies to comply with RIA requirements and to improve the quality of RISs prepared for decision makers, and monitoring and reporting on compliance. In addition to administering the Australian Government's RIS requirements, the OBPR also looks after the Council of Australian Government (COAG) RIA process.

Australian Government RIS requirements

For the Australian Government, a RIS is currently required for all Cabinet proposals and for non-Cabinet proposals that have a measurable or significant regulatory impact. The OBPR provides an Early Assessment and a Final Assessment of the adequacy of a RIS.

- An Early Assessment by the OBPR occurs part-way through the policy process, and aims to improve the quality of the RIS at early decision-making points. Agencies are encouraged to use the early assessment RIS as part of the consultation process with stakeholders.
- A final policy decision must always be accompanied by a RIS that has had a Final Assessment by the OBPR. The OBPR assesses the adequacy of the RIS at this stage, and provides advice of its assessment to decision makers. The final RIS is required to be published as soon as practicable after announcement of the final policy decision – the OBPR maintains an online RIS register for this purpose¹.

Australia's approach to RIA is consistent with the Organisation for Economic Co-operation and Development's (OECD) 2012 recommendation that member economies integrate RIA into the early stages of the policy process for the formulation of new regulatory proposals.

Between the beginning of the current RIA arrangements (which began in March 2014) and 30 June 2018, Government agencies finalised and published 194 Commonwealth RISs. Of these, all 194 RISs were compliant with Government requirements (Table 1)².

This included 40 independent reviews certified by agencies as undertaking review and analysis equivalent to a RIS³.

Table 1: Australian Government RIS compliance at the final decision-making stage March 2014 to 30 June 2018

	Number
RISs required	196
Compliant RISs prepared ⁴	194
Best practice RISs	119
Exceptional circumstances exemptions	2

Of the 154 Commonwealth RISs reported as compliant by the OBPR, 119 were judged to represent RIA best practice. Best practice is the judgement that the RIS is consistent with the principles contained in the Government's RIA framework and reflecting a level of rigour, consultation and analysis commensurate with the problem being addressed.

The remaining 35 RISs achieved compliance with RIS requirements, but to meet best practice would have required one or more of the following:

- greater definition of the policy problem being addressed;
- a greater level of analysis commensurate with the likely impacts;
- a higher level of consultation or representation of stakeholder views on the options and likely impacts on regulated stakeholders and the economy; or
- meeting transparency and publishing milestones.

¹ The online register is at the Regulation Impact Statement Updates page at ris.pmc.gov.au

² Compliance with Australian Government RIS requirements is measured by whether an agency has prepared and published an adequate RIS (unless a Prime Minister's exemption is granted).

³ An independent review may be used in lieu of a RIS where it has involved an equivalent process and level of analysis to a RIS. The OBPR does not assess the adequacy of independent reviews in meeting the Government's RIS requirements.

⁴ Australian Government RIS compliance includes independent reviews used in lieu of a RIS.

All but two significant regulatory proposal was supported by a RIS or a certified independent review at the time it went to final assessment by a decision maker. The two exceptions granted were for:

- *Marine Order 43 (Cargo And Cargo Handling - Livestock) 2018*
- *Sugar Industry Code*

Post-Implementation Reviews

Under the Australian Government's RIS process, agencies must complete a post implementation review (PIR):

- within five years of implementing a regulatory change which has a substantial or widespread impact on the economy; or
- within two years where an adequate RIS was required but not prepared or where a Prime Minister's exemption was granted.

Agencies may also be required to commence a PIR within two years if the relevant Ministers agree that the RIS which informed the final decision to regulate sufficiently diverged from best practice. In all of the above cases, if a PIR is not completed within the required timeframe, the OBPR may report the agency as non-compliant with the Government's PIR requirements.⁵

In the period March 2014 to June 2018, 93 PIRs were completed and published. As at 30 June 2018, 14 PIRs were yet to be completed. Of these, four were not compliant because they were overdue.

More details on PIRs are available on the Regulation Impact Statement Updates webpage⁶.

Council of Australian Government's proposals

COAG RIS is required for agreements or decisions of COAG, Commonwealth-State ministerial councils and national standard-setting bodies which, when implemented, would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done.

A COAG RIS is required at two stages during policy development – for consultation, and for final decision. The OBPR is required to approve each RIS before it can be released for consultation or provided to decision makers, and advises the decision-making body at each stage whether the analysis in the RIS meets COAG's adequacy criteria. One of these criteria is that the RIS must demonstrate that the preferred option results in a clear net benefit to the community.

During the period March 2014 to June 2018, COAG Councils or national standard-setting bodies made 46 decisions which required the preparation of a COAG RIS. Of these, five decisions were not compliant with COAG RIS requirements because they were not supported by an adequate RIS at the final decision stage.

COAG RISs and the OBPR's assessment of them are published on the Regulation Impact Statement Updates page on PM&C's website.

⁵ A PIR that is not completed within the required timeframe will trigger non-compliance, unless the measure the PIR relates to has not been implemented.

⁶ ris.pmc.gov.au

The Department is happy to give further assistance to the Committee.

Yours sincerely

Jason Lange
Executive Director
Office of Best Practice Regulation
17 October 2018