

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Department/Agency: Treasury

Question: BET 61

Topic: Office of Best Practice Regulation (OBPR) - Foreign Investment

Reference: Hansard page no. 83 - 02 June 2015

Senator: Wong, Penny

Question:

Senator WONG: I will refer you to Hansard, page 21. This is my question:

I want to go to the changes to foreign investment very quickly. In relation to that, the Department of the Treasury chose to complete a short-form RIS. You indicated it was OBPR's view that, for this proposal, a standard-form RIS would have been consistent with best practice.

Mr McNamara : That is right.

Senator WONG: That was the view of OBPR?

Mr McNamara : That is right.

... ..

Senator WONG: But they chose not to undertake it?

Mr McNamara : Under the system, they get to make the choice of the form of the RIS and they chose to do a short-form.

So I assume, given your evidence, he is talking about the threshold changes.

Mr Lonsdale: Yes, Senator.

Senator WONG: So is it the case that McNamara has told the truth to the Senate committee and he communicated—the OBPR communicated—to Treasury that they thought a standard-form RIS was appropriate.

Mr Lonsdale: I have no reason to doubt Mr McNamara's evidence. I want to make that clear. My understanding of the process is that we undertook a very comprehensive RIS for the first threshold set of changes. It may be called a short-form RIS but it was very comprehensive—

Senator WONG: Who is responsible for this? Is it Mr Donnelly?

Mr Lonsdale: I am ultimately accountable. The department makes the call on what sort of RIS we prepare.

Senator WONG: I want to know who this was negotiated between. OBPR is dealing with someone in the department. That is usually what happens. I want to just understand why the department said no to OBPR's view that there should be a standard form RIS. If you were not part of that conversation, I would like to speak to someone who was.

Mr Lonsdale: If could make clear, Senator, before I ask Mr McCullough to speak: at all times we are engaged with the OBPR. It could well have been the case that the OBPR thought a standard form RIS was appropriate, but the evidence that we gave at this committee in February was that there were a couple of issues where we were not able to complete the RIS to a standard form RIS quality, if you like. We consulted with the OBPR on the best way forward, given that, and the department took the view that a short-form RIS would be appropriate.

Senator WONG: Mr McCullough, were you the person who dealt with OBPR on these issues? Were you aware that their view was that you should do a standard form RIS?

Mr McCullough: Yes, Senator, I was aware that their view was that a standard form RIS was

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required. As I gave in my evidence at the last estimates hearing, it was my recollection that the policy area had spent several months developing a standard form RIS to the early assessment stage, which is what is required there. We got to a point where there were two issues that were outstanding that could not be agreed between OBPR and ourselves. In my view, OBPR was wrong. I rang the head of OBPR to say, 'What can we do about this impasse, because we are coming up to the timetable that we have been working for for months?' And he said to me, 'It's the department's choice in which form to do it'—

Senator WONG: That is true—

Mr McCullough: I advised then—rather than going through the motions of trying to solve those two problems that, in my view, were rather minor and not to the point—that we should avail ourselves of the choice to lodge exactly the same RIS but call it a short-form RIS.

Senator WONG: What were the two issues?

Mr McCullough: One was around the problem definition, as I recall it. I will have to take that on notice because I cannot remember the precise issue. This was before December last year—I remember it being, in my opinion, the kind of thing that was a technical issue.

Answer to Question BET 61

On 7 November 2014, Treasury submitted a Standard Form Regulation Impact Statement (RIS) to the Office of Best Practice Regulation (OBPR) for early assessment. OBPR responded on 14 November 2014 with a number of suggestions to further develop the RIS prior to it being used as a basis for a decision. Treasury was able to adequately address the matters raised by OBPR prior to the Government making a decision on the matters covered by the 11 February 2015 policy announcement, with the exception of two issues, as follows:

- **The policy problem: OBPR considered that the RIS did not adequately establish the case that there was a policy problem that required government intervention.**
 - Treasury considered that the community had lost confidence in the foreign investment framework's ability to appropriately screen and assess foreign investment proposals in the agricultural sector against the national interest test. This view was based on the information collected from public consultations for the Government's Agricultural Competitiveness Green Paper and the evidence submitted to the Senate Standing Committees on Rural and Regional Affairs and Transport for their 2013 report *Foreign Investment and the National Interest*.
 - The loss of confidence in the foreign investment framework justified a government response because foreign investment in agriculture has made, and will continue to make, an important contribution to Australia's agricultural sector. Without community confidence in the foreign investment framework, the community's continued willingness to accept foreign investment in agriculture could be threatened.
- **The likely net benefit of each option: OBPR considered that the RIS did not adequately discuss how the status quo addressed the policy problem.**
 - The Australian Government Guide to Regulation requires a range of policy options to be assessed in a RIS, including a non-regulatory or no policy change

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option. The exception is where a RIS covers matters that were the subject of an election commitment. The Guide states:

A RIS covering matters which were the subject of an election commitment will not be required to consider a range of policy options. Only the specific election commitment need be the subject of regulatory impact assessment and in this situation, the focus should be on the commitment and the manner in which the commitment should be implemented.

- Treasury considered that the RIS was covering matters that were the subject of an election commitment, based on the material in the Coalition's 2013 publication *Our Plan: Real Solutions for All Australians*. As such, Treasury considered that a detailed analysis of the costs and benefits of options other than election commitments, including the no policy change option, was not required.