C O R R E C T E D V E R S I O N

STANDING COMMITTEE ON ENVIRONMENT AND PLANNING

LEGISLATION COMMITTEE

Inquiry into the regulatory impact statement process

Melbourne — 8 May 2013

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Mr R. Deighton-Smith, director, Jaguar Consulting.

The CHAIR — I declare open tonight's public hearing, which is in relation to the inquiry into the regulatory impact statement process. I welcome the witness, Mr Rex Deighton-Smith. Obviously, Rex, you will indicate where you are from and which organisation you represent. Before we start taking evidence, I advise that all evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders, and therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by that privilege. All evidence is being recorded, and you will be provided with a proof version of the transcript in the next couple of days.

You have been allocated 45 minutes for this session, and I will advise you close to the time when you are to finish. To ensure that there is sufficient time for questions, the committee asks that any opening comments be kept to about 5 minutes. I ask you to begin by introducing yourself and indicating for transcript purposes the name of your business and the business mailing address so that we are able to provide you with a copy of the transcript. I welcome Mr Deighton-Smith.

Mr DEIGHTON-SMITH — Good evening, Chair, and committee members, and thank you for the opportunity to appear before you. My name is Rex Deighton-Smith, and I am the principal of Jaguar Consulting, which is a firm that provides a range of advisory services to governments, international organisations and some private organisations as well, with a particular specialisation in regulatory impact assessment.

I will go back a little further and give you some background on my experience in relation to impact assessment. It spans nearly 25 years now. I was the director of the Victorian government's Office of Regulation Reform, which was the predecessor to the Victorian Competition and Efficiency Commission. I did that job in the first half of the 1990s and in that capacity was responsible for approving regulatory impact assessments, providing training to officers who were preparing them and doing all of those functions that VCEC would undertake now. I spent the latter part of the 1990s working on regulatory reform issues, including impact assessment, for the OECD in Paris.

On my return at the start of 2000 I commenced consulting, and I have kept consulting in this sort of capacity. I continue to consult to the OECD and have worked quite extensively on impact assessment for them over the last — what is it? — 13 years, since I have been back in Australia, as well as working within Australia for Victorian government agencies, federal agencies and some of the COAG-established bodies like the Australian Building Codes Board and the National Transport Commission. I am also an advisory board member for the Centre for Regulatory Studies at Monash University and lecture in their master's degree program on the regulatory process, and obviously within that context I also cover regulatory impact assessment issues. I guess my perspectives are varied as a result of that experience.

Overheads shown.

Mr DEIGHTON-SMITH — What I thought might be useful to begin with is to give you some broad context for impact assessment as we consider it in Victoria and what improvements we might consider making in the Victorian context. Both Victoria at a state level and Australia as a country were pioneers in the use of this tool. Both jurisdictions started in 1985, and at the time there were only two other OECD countries that were using this tool. A great deal has changed in the ensuing nearly 30 years, and virtually every OECD country now uses impact assessment. They use it in different ways and to different degrees, but they all have some element of this within their regulatory processes. You will also find that some of the countries in transition, if I can put it that way — the countries outside the OECD membership — have also been using impact assessment in recent years.

It has been a one-way street. No country that has started using it has ever abandoned it. Instead what we see is that there is an almost universal trend that you very often start quite small but tend to expand the scope of your impact assessment processes over time and increase the degree of rigour over time. There is a bit of learning by doing, and there is a bit of, I guess, legitimacy conferred over time by seeing some of the positive results. The other thing that I think is worth pointing out is that in all of these countries this is something that is invariably seen, essentially, as a technical discipline and is supported by both sides of politics, or indeed all sides of politics in multiparty contexts.

Australia has been a keen participant in the OECD's work in this area, and if we look broadly at the Victorian system and also the federal system, they do very largely reflect the OECD's published best practices in this issue. If we come closer to home, obviously the Productivity Commission conducted an impact assessment benchmarking study recently that came up with pretty positive assessments of Victoria's system in relation to other Australian jurisdictions, and that is also true of the series of assessments that the Business Council of Australia has run over a period. Broadly speaking the picture is quite a good one in terms of how our use of impact assessment compares with various other jurisdictions, but obviously room for improvement does exist.

Having looked at some of the submissions and at the transcripts of presentations you have had so far, it seems that it is worth looking at some of the arguments that are being presented. Some of these arguments I have seen presented in similar contexts over a number of years, I would have to say, and I think it is important to address them.

Impact assessment, it is often said, particularly by regulators, is an expensive process, and an important point to consider in that context is what it actually requires you to do. In broad terms a four-line summary would be that it requires you to spell out your public policy objectives, to identify all the different ways of achieving them and to assess them in benefit and cost terms, and I would argue that that is very much consistent with a well-functioning policy process. If the policy process that you are operating within and your regulatory agency is working well, then you should have a pretty easy path through the impact assessment process. Historically we see that it is very often the case that the regulators that complain most loudly about the costs and time delays are those that have policy processes that are deficient in various ways.

We need to benchmark those costs. I noticed that one agency estimated that an impact assessment costs them $40 000 or $50 000 on average when they have a consultant doing it, and I would have to say that that is a pretty realistic sort of estimate. Is that a big cost, or is it not? To answer that I think we have got to compare it to the costs that are imposed by the regulations that we are subjecting to this assessment. If you take a look at a sample of the impact assessment documents that the VCEC publishes on its website, have a look at what those costs that are being imposed over the 10-year life of most regulations are and you will see that $40 000 or $50 000 is a very small percentage of that. Another useful comparison would be what has been the cost of the policy process that you have gone through to make regulations overall? What sort of proportion of that cost does your impact statement cost represent?

The importance of that is to say if your impact assessment produces even a fairly marginal increase in the quality of the regulations that you end up with, it is going to have paid for itself, probably many times over. If you look at OECD publications over the years on this subject, they do come up with a clear view that if you look at impact assessment in benefit-cost terms, it very clearly pays for itself, and indeed pays for itself many times over, notwithstanding the fact that many of those benefits are hard to see. Many bad ideas do not actually get to the stage of an impact statement even being drafted. The knowledge that that discipline is there and that you need to get through that process tends to dissuade some of those ideas that are a little thought bubble sometimes but have an ability in some contexts to take on a life of their own. That is an important discipline, but a hidden one, that the impact assessment process provides.

I would like to turn to some more specific comments about how I think we could improve existing Victorian processes. I would first like to make a couple of comments about the business impact assessment process that we apply to bills, and then to look at the regulatory impact statement process. Again, if we look at what the OECD and other organisations would tell us are best practices, it is that a similar impact assessment discipline should be applied to a whole range of legislative instruments. It should not matter whether we are looking at bills or regulations, the formal status of the instrument is not important. What is important is the size of the impact, and we should gear the extent of our impact assessment to the size of the impact.

If we look at Victoria's history, what we have done is expanded the scope of impact assessment quite substantially over the years. In 2004 we started applying this to bills for the first time, and then in 2011 we started applying the RIS process to subordinate instruments other than regulations, and that has brought quite a lot of additional instruments within the process. I think we have improved our standing quite a lot as a result of those broadenings of the scope. But there are some areas, if we turn to the business impact assessments, where I think we do fall short of best practice. If we could address these issues, I think we would have benefits, both in terms of the credibility of that aspect of our impact assessment but also in terms of the usefulness of the analysis that we come out with.

The CHAIR — I am conscious we have got other witnesses coming and there is a bit to get through in terms of your handout. Can I suggest you go through it, perhaps point out the ones that are of significant impact, and then we can move forward.

Mr DEIGHTON-SMITH — I would like to see a broadening of this process. We should call it a legislative impact assessment and we should make it clear that, in common with the RIS process, it is about impacts on society as a whole but it is not about making life easier for business. That is important for the credibility of the process, because if it is to be supported by all groups within society, it needs to be understood as something that implies that broader perspective of what is good and what is bad, what benefits matter and what costs do, just as we do with the RIS process.

Very importantly, though, BIAs are not and never have been public in Victoria. The opportunity does exist to make them so. I understand that they are in the first instance a cabinet document, but I think it is certainly possible for those impact assessments to be tabled in Parliament with the bill at the time it is introduced. If a bill does not result from cabinet's consideration, then I see no problem with the impact assessment remaining a confidential document. But you will, I think, by making that information available, improve the parliamentary process and also the public's ability to participate in that process.

We often get criticisms that the RIS process is something that is not really influential within departments, and I think that is true in some cases, though much less so in others. If we look at the COAG RIS processes, I think it gives us a guide as to how we can make it more influential. When we are talking about very large RISs — that is to say very significant policy proposals — then I think the idea of a two-stage process is a good one. It provides an opportunity for us to engage more fully with the stakeholders and to get hold of more information. Data is often a fundamental problem in terms of delivering a good analysis. Looking toward that COAG model gives us a lot of pointers as to how we can improve matters. We would have to apply it on a targeted basis, as I said, but I think it is worth consideration.

Another aspect is looking back on our assessments and working out whether they actually were accurate. Speaking from experience, it is a difficult process, particularly when no-one, no other jurisdiction, has regulated in a similar manner to what we are proposing. It is a difficult process to say, 'What would be the benefits, what would be the costs?', and so you often get it wrong. And it is important to look back and say, 'Were the assumptions we made, were the estimates we made, borne out in practice?' because if they are not, the regulations may well be doing more harm than good, they may well be unjustified and they may well be doing harms that we did not anticipate. The idea of a systematic requirement — and again you might keep this to a narrow scope looking only at the most significant regulations — but the idea of requiring a systematic ex-post assessment to be done maybe two or three years after the regulations were implemented, I think potentially gives us an important feedback loop and prevents bad regulations from staying unamended on the statute books for long periods of time.

One other issue I would like to flag in this area is that some departments for various reasons in recent years have tended to put together very large numbers of regulations as an omnibus set. There are two examples here. When the new Public Health and Wellbeing Act was passed, a single set of regulations — the Public Health and Wellbeing regulations — replaced 10 different sets of regulations, which in many cases related to entirely separate aspects of public health.

There should be one set of regulations to one RIS. There is far less public engagement with the process and far less ability to undertake detailed useful analysis because you have to cover the whole lot, and I speak as the person who wrote that RIS. I worked very hard on it and produced quite a long document, but if I had been writing 10 different RISs with 10 different sets of regulations, we could have gone further. We would have had more public engagement and very likely had better quality regulations as a result.

The Occupational Health and Safety regulations, which again were implemented with the new act, were another example of that same dynamic. How do we address this? I do not have very many good ideas. I suspect that guidance materials like the *Cabinet Handbook* might well be the way to go, and obviously the *Victorian Guide to Regulation* as well.

There has been a lot of criticism that RISs are too technical, and I have some sympathy with that. It is true that a lot of stakeholders would find it difficult to engage with some of the RISs I have written. At the same time, if you have complex public policy issues, you need a complex analysis in order to do justice to it. How do we

combine the two? I think one key way of doing it is to make sure that our summaries are short, non-technical and set out just the skeletons of the argument. That is impossible at the moment because of the very detailed requirements written into the guidance material, notably the *Victorian Guide to Regulation*.

VCEC often forces me to publish entirely dense 20-page summaries on the front of my RIS, and it ended up that recently I put the short summary in front of the executive summary. My short summary was a page and a half of non-technical discussion. That is rarely done, but that sort of thing can help us to communicate with stakeholders while still having the detail that we need in the body of the analysis.

The other thought that I have in that respect is: is it time to systematically implement a plain language policy as it relates to the RIS process? This is a big ask because of the history of this in Victoria, and I am thinking of the Law Reform Commission of the late 1980s and early 1990s. They put a lot of effort into it and achieved quite a lot, but there was a big investment to get results there. I commend it to you for consideration.

I will not go into the technical issue of the discount rate too much. I do note that it is specifically mentioned in your terms of reference, and it is discussed in the written version of my paper. A short summary is that the current guidance is internally contradictory: it is not consistent. If you read it accurately, the current recommended rate is or should be 1.5 per cent. In fact VCEC tells you it is 3.5 per cent, but that is not based on a consistent reading of what is actually written in the *Victorian Guide to Regulation*.

More importantly there are very strong arguments that say a rate of 3.5 per cent is far too low. I have done research for the OECD which shows that of the 10 countries we looked at, the rates ranged from 3 to 10 per cent, but most of them were up around that 7 or 8 per cent mark. Personally, having gone through a lot of the conceptual literature, I am convinced that is the kind of rate we should be using, and that, if we did so, we would improve the credibility of our impact assessments with business, who ask the question, 'Where can I get money for 3.5 per cent? I can't, and yet it is my money I have to spend in order to comply with your regulations, so what relevance does this 3.5 per cent have to me?'.

There are a couple of smaller methodological issues, but in the interests of our time constraints I will not go through those. The only other point I would make is about innovation. In recent years there has been relatively limited innovation in the way we go about things. When I look at the work I do for the OECD, I see some interesting new ideas coming out in a number of its member countries. Something that the OECD is about to publish as a web publication, which will be a constantly evolving and updating thing, is called the 'OECD Observatory of Public Sector Innovation'. That will have a strong regulatory reform element to it. I have contributed to that, and it will document some important innovations in terms of the impact assessment process. I briefly mention a couple of them in my written paper.

I will stop there and apologise for going over time.

The CHAIR — That is all right. Thank you very much, Mr Deighton-Smith. I think one of the issues that we are grappling with as a committee is we are hearing evidence that the RISs are not accessible to the public. You indicated in your presentation that there is the need to expand, the need to streamline, the need to consolidate, and as you said the need to write a summary of your executive summary. I am somewhat confused by the notion that accessibility to the public is difficult because it is too long, yet you are arguing there should be more depth.

You gave an example of the consolidation of 10 different sets of regulations into 1, but you yourself said that that then became too brief. I am trying to grapple with your notion that 10 into 1, which sounds logical to make it easier — and you argued about plain speak as well, in terms of plain English or plain language — so I am grappling with how you bring together that conflicting evidence you have provided to us.

Mr DEIGHTON-SMITH — It is important to note that in those examples I gave you, the subject matter is often quite distinct. Stakeholders that are interested in one part of those Public Health and Wellbeing regulations would not necessarily be interested in any of the other nine. For example, to take two of them that I recall off the top of my head, one related to swimming pools. It was about regimes for water testing for microbiological quality. That would be of great interest obviously to all of the sorts of organisations that run public swimming pools. A second chapter in that RIS was about legionella, and about how you keep cooling towers disinfected and prevent the spread of legionella through that transmission mechanism. That would be of interest to an entirely different group of people. For either group, but I guess certainly for people who are running the local

municipal pool and who might have rather less experience engaging with these legislative processes than, say, major building managers in the CBD, they have to find the relevant part of the impact assessment for them in a document that may be a couple of hundred pages long and which mostly relates to other things. The mere fact that when they get hold of a copy of the document it is 200 pages long I suspect has a disincentive effect on a lot of people. I guess I was suggesting that if these things had been done as separate sets of regulations as they previously had been done, then you might well have got more engagement from those sorts of stakeholders who are interested in one particular set of regulations or, as it is now, one aspect of the consolidated regulations.

The CHAIR — I will just ask a supplementary question on that topic before I get a question from Jan. Who then makes that assessment, whether it is a consolidation of 10 or a consolidation of two, or whether indeed it becomes 10 individual — —

Mr DEIGHTON-SMITH — Of the two examples I gave you from my experience here, I wrote the impact assessment for one of them but not the other one. But I have worked for that other agency as well. My assessment is that the decision to go down that path was largely made on the basis of administrative convenience, and I do have a certain amount of sympathy for that. What you had was a new act coming into play, and as I pointed out in the written version of my submission, traditionally what you tend to have is a new act replacing the old act. There are transitional provisions that retain the regulations made under that old act in force until such a time as they are progressively replaced by regulations made under the new act. Sorry if I am telling you how to suck eggs as a parliamentarian, but it is a bit messy. There are concerns that the powers under the new act do not necessarily line up very well with the powers provided under the old act. So there are downsides of what I might call the traditional approach. Here it was thought, 'If we go down this path, we have only got to get through the RIS process once and then we can get all of these new regulations in place and ready to function at the time of the commencement of the new act, so it is all neat, clear and easy'. Certainly in the case I was involved in it worked out that way — they did manage to get through the process and get the regulations into place in time for the commencement of the act. So at that level that was a success, but I guess what I am saying is that it has, I believe, those negative consequences. It looks to me that if you were putting together two or three sets of regulations you would not necessarily have much of a problem, but when you are looking at 10, as in the case of public health — I think it was seven or eight in the case of the occupational health and safety regulations — it is a much larger question.

The CHAIR — Thank you.

Mrs KRONBERG — I have a couple of little questions in a stack. Firstly I would like to have you explain how you would maintain your objectivity in this field and also the directions you may or may not have to provide to people who have come in on an ad hoc basis to provide expertise outside of your technical understanding of any particular legislative process. So there is a question of objectivity and a question of oversight and synthesis. Things can get a bit bogged down if there are suspected agendas.

Mr DEIGHTON-SMITH — Yes. The objectivity question is certainly an important one. Speaking as a long-term practitioner in the area, I need, I believe, to maintain credibility with at least a couple of different kinds of organisations, one being the regulatory agencies that might engage my services to write an RIS, the other being the VCEC, which I need to engage with fairly intensively to develop and finalise the RIS from its first draft form, and which I engage with at a range of levels. I do not think that my long-term prospects would be very good if I sacrificed too much of my objectivity. I would probably then be regarded as someone whose reputation suffers in terms of his ability to provide sound analysis. So there is an important incentive there.

That said, I recognise that you are very often asked to present regulatory proposals in their best light. Certainly a criticism that I have heard of RISs, not only in Victoria but in other jurisdictions, is that they read too much like a polemic in favour of what is being chosen rather than as a dispassionate analysis. I think that to greater or lesser degrees most of us consultants, and probably nearly all the public servants who are writing these RISs, are guilty of that. There is a question of client expectations which weighs on me, and I have to navigate a path between at some level meeting those and at another level maintaining the sort of objectivity that is consistent with maintaining a long-term reputation. I suspect the task is a little more difficult for public servants than it is for consultants because they are very much accountable to their management in a broader sense, whereas I might work for department X this year, once next year and once two years after that. So there is not quite the same sort of intensity in that relationship of accountability.

The only other thing I would say in that regard is that in the attitude of regulating ministries to this issue of impact assessment broadly and following that through, the objectivity of analysis varies quite widely. For some of the departments that I have worked with over an extended period of time — and for some of them it has been well over 10 years now — they have had occasion to see from personal experience how the application of this process has led them to better outcomes in terms of the quality of the legislation. In many of those cases the people who were responsible for the legislative program have become strong supporters of the process. Inevitably this issue of objectivity and of trying to put the best face on what might not at base be a very good policy is less likely to arise in that circumstance. The contrast between those whom I would call best performers and some other agencies that I think really do not see any benefit in the RIS process, that just see it as a hurdle they have to jump over, is quite stark, and this issue of objectivity is obviously much larger in respect to that latter group. Sorry, there was another question in relation to — —

Mrs KRONBERG — It was in terms of the synthesising — who takes ownership of the exercise of synthesising the inputs where you have expertise across a range of inputs?

Mr DEIGHTON-SMITH — Yes. The way I have worked in the past is that if I employ people with other expertise to assist me on an RIS subject, they are subcontractors to me and the document is my company's document, so the answer is yes, I take on responsibility. There is an issue, I suppose, at one level in that you are often working fairly closely with people from regulatory agencies, and you are dependent upon their expertise as well.

Again, the document is generally published with an acknowledgement of me as author. There have been circumstances where departments wanted to take co-ownership of the document, and to the extent that they take some or all ownership of the document you inevitably have to stand back and say, 'They have a right to make certain judgements about what is in it'. That can be a bit, I guess, potentially difficult to negotiate. 'How much responsibility do I have for the document? Therefore how much do I have to insist on standards I am comfortable with?'. In practice that is not a problem that has arisen as a very large problem for me, but I guess it is there, at least theoretically.

Mrs KRONBERG — Thanks very much.

Ms PENNICUIK — I was interested in the page you skipped over about methodological issues, where you say current guidance on the value of a statistical life should be broadened to cover injuries and also that there need to be significant improvements in advice on risk analysis. I wonder if you could say a bit more about those.

Mr DEIGHTON-SMITH — Okay. At the moment we have a situation where there is some pretty clear guidance. Sorry, going back a step, it is obviously the case that much of what we do in the regulatory space is aimed at preserving life and limb. If that is what we are doing and we are comparing different ways of doing it with different costs and different levels of effectiveness, we need to value a life. At the risk of giving you a polemic, this does not imply a moral position, but it implies looking at what people actually do and what that implies for the way they value small levels of risk reduction. For example, if you do a more dangerous job, you will generally get paid more. It is interesting to know how much more and compare that to how much riskier the job is. It tells you something about how much people value risk and risk reduction, because what we are doing here is reducing risks. We do not know who is going to die or be injured; we are talking about reducing overall risk levels by regulating. In that sense the value of a statistical life is important. It needs to be understood in that way, not as something that makes a moral judgement about what a life is worth.

With that sort of preamble, the guide to regulation the VCEC requires everyone to comply with has some pretty clear guidance. The short answer is $4.1 million approximately at the moment. There is not any guidance about injuries, and I think that a wide range of approaches have been used. I am concerned that a lot of them are inconsistent conceptually with this approach to the value of a statistical life. They tend also to undervalue the cost of injuries. That it is a poor thing. I would suggest that what is needed at a basic level is some guidance from VCEC on what is acceptable here, but my preferred position, which is consistent with practice in a number of countries, and the European Commission is a notable example here, is that there is a lot research literature behind this conclusion, but essentially there is a ratio. It is somewhere between 10 and 20 per cent of your value-of-a-life figure. That can reasonably be used as a value of a serious injury. We are getting a little technical, but I think that would be a small but important improvement.

When it comes to risk analysis the VCEC has made a number of comments on this in their previous reports, and I know you will be hearing from them in the near future. I have worked with them on some inquiry work which actually did cover this topic. One of the things we do not provide any guidance to regulators on is the question of when a risk is too small for it to be likely the government can or should reasonably intervene. We know that all of life involves risks and that we cannot eliminate all of them, and we know that the smaller the risks are that we go chasing and try to reduce, the larger the cost is going to be and the smaller the pay-offs are going to be. The question is: can we have some rules of thumb that make it easier for governments to say, 'No, we have looked at that, and that really does not look like the kind of issue we can usefully engage in'? Government has limited resources; it has to choose where it engages and where it does not. Sorry, I am probably preaching to the choir there.

If you look at the UK 10 or 12 years ago, the Health and Safety Executive — the equivalent of our WorkSafe — published a document which had three numerical benchmarks for use in different circumstances. Essentially if the risk is lower than one in X, then prima facie there is probably not an argument for government intervention. There are a whole lot of caveats around that, but it provided a sort of benchmark or basis for discussion about when government could reasonably decide it should or should not intervene.

To go beyond that, one of the areas of increasing research and improving practice is about how regulators implement their regulatory responsibilities. Do they look at the environment they are regulating in and consider the question of where the risks lie and direct their resources in terms of things like inspections and audits and so forth to where their risk analysis would tell them they ought to? There are a number of ways in which you can do that, and you can hope to get quite significant pay-offs in terms of being able to use your limited regulatory administration and enforcement resources more effectively and get better outcomes as a result.

Mr SCHEFFER — On page 6, where you talk about improving the BIA process, you say in the second point there that these assessments should be made publicly available. I do not want to be difficult, but what I am interested to know is: why are they not publicly available? You implied in the remarks that they were cabinet in confidence. What is the rationale for that?

Mr DEIGHTON-SMITH — It is the case that these documents do form an attachment to the cabinet submission at the approval-in-principle stage, so in a realistic sense they are cabinet documents and they can reasonably be covered by that sort of confidentially requirement that generally applies to them. I should say, though, that there is a provision — —

Mr SCHEFFER — Sorry, can I just interrupt you? That is a circumstance we understand. That is not a rationale as to why — —

Mr DEIGHTON-SMITH — As to why they should be, yes.

Mr SCHEFFER — Yes.

Mr DEIGHTON-SMITH — I understand it as being a case of — —

Just as cabinet minutes are not released for 30 years so cabinets are not subject to having the basis for their decisions and the nature of their discussions before reaching those decisions disclosed in public, this fits within that conceptual framework. The impact assessment is part of the basis for the decision. It may well have formed an important part of the discussion, so it is considered that it falls within that general requirement that we should not require cabinet to account in public for what it has done. It is a bit like the secrecy of the jury room, I suppose — a reasonable analogy.

There are provisions, however, already where if the minister sponsoring legislation and the Premier agree, these BIAs can be made public. The unfortunate fact is that to the best of my knowledge none of them ever has been. I think the existence of those provisions meant that along the way it was determined that it might well be reasonable or indeed even a good thing for that publication to happen, and for whatever reason it has not happened in practice.

It seems to me that if the cabinet has agreed, the parties have agreed and the cabinet has taken the next step and introduced a bill, it is subjecting itself, obviously, to the whole process of parliamentary debate, in which it will justify in detail the legislative steps it is proposing to take. If it is doing that, it seems to me that it ought to — —

It is a shorthand — it saves time, it puts everyone on the same page and it informs people better so that the quality of debate, hopefully, is improved — to just put that additional information which provides a lot of the background as to why the government is proposing to do this onto the floor of the Parliament.

The CHAIR — Having recently been a minister, the assessment process from my view is that the electorate making that assessment is perhaps the best impact assessment you can have. There is an election process and the legislation is acceptable or not. Can I just ask two final questions. We have heard about the level of analysis. It can be seen as being disproportionate to the significance of the regulatory proposal. Do you share that view?

Mr DEIGHTON-SMITH — I would say that, as in most areas of human endeavour, errors are made, but I would say that the errors in terms of proportionality of the analysis go in both directions. There probably are situations where I have thought that the standard of analysis that has been demanded, whether by VCEC or its federal equivalent, was a bit more than I thought was appropriate or necessary given the implications of the proposal. At the same time, I have seen in many circumstances impact assessments where I thought the level of analysis was entirely inadequate, and I have wondered in various contexts how it was that those impact assessments came to be approved. If the question is whether we err systematically on the side of requiring too much analysis — a disproportionate amount — my opinion would be no, I do not think we do. But it is important that we do what we can to make sure that the right amount is required in each individual circumstance.

The CHAIR — We have heard suggestions that VCEC should be an independent statutory body that is reporting directly to Parliament rather than to the minister. What do you think of that proposal? Is there any demonstrated advantage of that? Are there examples in other jurisdictions?

Mr DEIGHTON-SMITH — If you look at OECD writing on the subject, the issue of the independence of that gatekeeper body like VCEC is stressed as being a very important one, and I would agree with that assessment. I say that in part as someone who has led a body like that and has been subject to certain pressures at various times. Certainly we did not have even VCEC's level of independence at that time in the 1990s. I would agree that it would be a good thing to enhance their current level of independence. That said, I think that in the nearly nine years they have been operating they have been fairly successful, given the current arrangements under which they are established, at safeguarding and maintaining their independence. That is probably in part testament to some of the individuals involved, but I think by and large they have been able to function pretty much as intended.

The CHAIR — I will ask one final question in the final 30 seconds. I hope I do not open a can of worms. In the introduction you mentioned policy process deficiencies. Can you just explain in 1000 words or less what you mean in the context of this presentation?

Mr DEIGHTON-SMITH — This would be nothing new, but there are dynamics that lead governments at times to want to act reflexively to determine that they will regulate in a particular area in response to a crisis that is political — the tabloid newspaper problem, if you like. Impact assessment is in part about putting some hurdles in front of that sort of dynamic. The other aspect of that is that when there has been a decision to do something — and there is significant research on this — there is often a tendency in particular policy areas to use particular policy tools without a whole lot of analysis or consideration of different options. In certain policy spaces regulation is almost always looked to in the first instance. In other spaces it will be other tools. Impact assessment is partly about trying to create a space in which you need to stand back and say, 'Can we be a bit more systematic about this?'. It is about first of all answering that threshold question of, 'Ought we really intervene?', and secondly, 'If so, have we made ourselves aware of the different ways we can do it and thought seriously about which one might be best?'.

Ms PENNICUIK — My final question is more of a general one. I have read through what your submission says and even the summary of it. On the one hand you are saying that Victoria is working pretty well, that it has been a leader, and that since VCEC has been there it has functioned well, but on the other hand there is a lot of room for improvement and it is not always achieving what it should in terms of improving regulation or stopping regulation. It seems contradictory.

Mr DEIGHTON-SMITH — I think the answer lies in the fact that those of us who have been involved in impact assessment for a very long time mostly declare ourselves to be disappointed in the outcomes. When we looked at it 20-odd years ago we probably thought that we would have been rather more advanced than we are

today in terms of how influential it is in the policy process and how widely accepted it is within both the administration and governments themselves. Given that, it is perhaps unsurprising that I can give you a long list of areas which I think we could tweak and improve, bearing in mind that there is a huge methodological can of worms involved in doing cost-benefit analyses in this context. I have raised some specific issues, each of which is a bit technical, but they are almost quite small in the context of the larger question of whether we are at least trying to do cost-benefit analysis rather than some other narrower analysis. So we are doing well by comparison with how badly everyone else is doing, if you like. I think we are doing well enough that we can pretty clearly say we have contributed to better policy outcomes, and that policy processes have been improved to some extent through us systematically applying and advocating for this sort of tool. But, as I say, I think the potential of the tool remains much greater than what we have achieved to date.

The CHAIR — One final final question.

Mrs KRONBERG — My question will be succinct. I was fascinated when you directed the committee's attention to the fact that many RIA benefits are hidden. Are they ever revealed? Are they ever discovered? Are they ever quantified? Are they ever taken notice of? Or is that a patronising view in that the analysis is conducted on a higher level? Somewhere along the line is there a need to know, kind of implied hierarchy of access to information. thinking, relative importance?

Mr DEIGHTON-SMITH — No, my comment there was really more about the systems. It was saying that the fact that people, regulators, know that, they have to jump this hurdle. They have to go through the VCEC and convince them to sign off their RIS before they can go down the rest of the path and make regulations. It means that some ideas that are probably not very well thought out, that get tossed around, do not go any further. Without that sort of gatekeeper function, more of them would succeed.

Mrs KRONBERG — Do you need a champion?

Mr DEIGHTON-SMITH — Do you need a champion?

Mrs KRONBERG — Yes.

Mr DEIGHTON-SMITH — I would say the VCEC here tries to function as the champion of good policy processes and good regulation. Some would say that they insert themselves into the process and make policy judgements illegitimately. It is a fine line to walk — I know, having tried to walk it — but I think they approach their task very professionally and are open to being challenged, if you believe they are straying into that space of taking positions on quality rather than requiring good and transparent analysis.

The CHAIR — Thanks very much, Mr Deighton-Smith. You have provided us with two documents: one is the slideshow presentation of 14 pages; and the other is a 7-page document entitled *Presentation to the Parliamentary Inquiry into the Regulatory Impact Statement Process* dated 8 May 2013. Are you happy for us to put those on the website?

Mr DEIGHTON-SMITH — Yes, I am.

The CHAIR — Both of those?

Mr DEIGHTON-SMITH — Yes. They should be very consistent with each other. The slideshow is simply an attempt to render the paper into a slightly shorter form.

The CHAIR — I just needed your admission on tape, that is all, being an ex-copper. Having said that, I am happy with your presentation. Thank you very much. We will be providing you with a copy of the transcript for you to review over the next couple of days. Once it has been signed off by you as being a true and correct record, then we will publish it on the website. Again, thank you very much for your presentation and your time. We went a bit over, but it was very detailed.

Mr DEIGHTON-SMITH — Thank you. Good luck with the inquiry.

Witness withdrew.