

CORRECTED VERSION

STANDING COMMITTEE ON ENVIRONMENT AND PLANNING LEGISLATION COMMITTEE

INQUIRY INTO THE REGULATORY IMPACT STATEMENT PROCESS

Melbourne — 17 April 2013

Members

The Hon R. Dalla-Riva
Mrs I. Peulich
Mr J. Scheffer

Ms G. Tierney
Ms S. Pennicuik
Mr S. Leane

Chair: The Honourable R. Dalla-Riva
Deputy Chair: Ms G. Tierney

Staff

Secretary: Mr K. Delaney

Witness

Regulatory Impact Solutions:
Mr P. Phillips, Director.

The CHAIR—I welcome Mr Peter Phillips who is director of Regulatory Impact Solutions. As I indicated before, all the evidence taken in 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, therefore, Mr Phillips, you are protected against any action you may say here today, but if you go outside and repeat the same things those comments may not be protected by this privilege.

All evidence is being recorded, then you will be provided with a proof copy of the transcript over the following week. You have been allowed 30 minutes for this session to ensure we have sufficient time for questions. The committee asks that any opening comments be kept to about five minutes and I would ask you to begin by introducing yourself and, as you heard before, provide your business mailing address so that we can send you a copy of the transcript. Welcome.

Mr PHILLIPS—Thank you, Chairman. My name is Peter Phillips, I am the director of Regulatory Impact Solutions. I have short opening comments to make, and I will make some of those, but I have taken some notes during the previous speakers' presentation that I thought I would add to, not contradict necessarily, but I have my own perspectives as well. Briefly, by way of background, I spent eight years in the Commonwealth Treasury. I am an economist by training. I also had two years in the Office of Regulation Reform and was a foundation member of the VCEC.

I have been writing RISs in earnest since 2007, and in the last four years my firm has written about 40 per cent of all RISs, and of that 75 per cent were fees RISs. My firm I guess has the lion's share of RIS business because it is the only thing we do. We only write RISs and BIAs so we have developed a specialist niche in the market. I can talk about prices later, I am not worried about that.

I would reiterate the previous speakers' comments that Victoria does have the best model in Australia and indeed worldwide. It is comparable to anything in the OECD. We spoke about COAG, you raised COAG as a point, and I think the Victorian system is superior to COAG. For a start I think we do more RISs. You can drive a bus through the COAG guidelines sometimes. It would be interesting to do a count on how many COAG RISs there are compared to Victorian RISs. I am sure you would find there are more RISs done in Victoria than by COAG. I have never found them particularly rigorous either. They used to be reviewed by the Office of Regulation Review, attached to the Productivity Commission, and the assessment requirements were not particularly onerous.

They are now assessed by the Office of Best Practice Regulation which has become more rigorous in recent years, but things were definitely more hard to get through, more rigorous, at the Victorian state level. Indeed, I think there are one or two examples of COAG RISs coming back to Victoria and being assessed under the Victorian Guide to Regulation because they were not considered up to scratch, basically. Two-stage RIS processes—we were talking about thresholds before—they may be a good idea for the very high threshold RISs. Out of some 20 or 25 RISs per annum, there might be three or four that might justify a two-stage RIS. I would not be in favour of mandating that for all RISs. For medium-size RISs, best practice departmental process is to often issue a discussion paper. DSE and DPI are very good at that. They will issue a discussion paper prior to the RIS going out, so when the consultant comes along a lot of the issues have already been fleshed out, and that reflects some of the comments you were making.

Who makes the decision? Under the Subordinate Legislation Act it is ultimately the minister. Obviously they take advice from the department but the minister has to decide if a RIS is brought forward ultimately. Pre-consultation is undertaken for that, and if a decision is made not to bring forward a RIS then a certificate has to be presented to SARC that consultation has taken place to determine that a RIS is not required—a bit chicken and egg. Good departments will engage stakeholders early. Often they have done a considerable amount of threshing out of the issues and consulting beforehand as a part of the RIS process itself. It is a requirement to consult.

You may have already had two or three consultations, most importantly—and Dr Rivers alluded to this—the RIS document itself, it is a live document, it is a consultation document. There is not a RIS that has not gone out with flaws or problems but it is designed to elicit comment. The more comment often the more effective it is. It is a consultation document. That is what it should be.

Proceedings suspended from 9.17 pm to 9.20 pm

The CHAIR—Just for the record we have had the bells ringing from the Legislative Assembly for five minutes. Hopefully you have not lost your train of thought, Mr Phillips, so I would ask you to continue.

Mr PHILLIPS—The question was raised whether RISs are overly-technical. I would say almost all are; not a quarter, all are. My last three RISs have been well over 100 pages each, and with regulation some of them have extended to 200 pages. They are unreadable often, and complying with the Victorian Guide to Regulation, overly technical and very user unfriendly and not accessible. I have had some early discussions with the VCEC about this, whether we could put out a 20-pager maximum, a sort of front end of the RIS and have all of the back technical material posted on the web, independently assessed by the VCEC, so all the rigour is lying behind the 20-pager.

Mrs PEULICH—Like appendices?

Mr PHILLIPS—Absolutely, yes. That would hopefully make it more accessible. I can see when people go to print off a document when they see 150 pages they just do not hit print. I try to make my executive summaries about 10 or 15 pages to make it a small stand-alone document but it is a real problem with them, the accessibility.

Costs of consultants: I mentioned in my submission that when I started off at the Office of Regulation Reform that 80 per cent of RISs were done by departments, 20 per cent by consultants. That proportion has flipped on its head now. At least 80 per cent or more of RISs are now done by consultants and about 20 per cent by departments. That is in large part because the technical aspects, the bar has continued to rise and, quite frankly, the average desk officer does not have the expertise to write a RIS. There was a system a year or two ago, perhaps three years ago, of regulatory liaison officers. I thought that was a good innovation.

Each department had a couple of people, one particular contact officer, who dealt with regulation. They are supposed to coordinate RISs and other regulatory matters through the department. That seems to have fallen away. I do not think they have met for 18 months. It was coordinated out of the Department of Treasury and Finance under the Better Regulation Unit. But if you wanted to maintain or develop some RIS expertise within departments that would be the area, the seat, you would try and develop it in. It is, in a sense, unfortunate that some expertise has gone out of the departments and now resides with consultants. I guess I am putting my old public service hat on when I say that.

The one comment I will make from my original opening remarks was that because of the increased level of expertise, sometimes consultants are engaged who have never done a RIS before and it can all end in tears, quite frankly. One thought we did have was to have a panel of accredited RIS experts who could be selected, if you like, preferred tenderers so that their rates are known by departments. There is a problem, I think, with some consultants underquoting and then putting in massive variations afterwards. It is almost de rigeur for some consultants, I would hazard a guess, particularly the larger consultants, and if you had that nailed down as expectations in some sort of panel, you would not get these variations running to tens of thousands in some instances. I think that is all I really wanted to say in my opening remarks but I am open to anything—as I said I have reasonable expertise in the area—so questions broad or technical or narrow, I am happy to answer.

The CHAIR—Thank you.

Ms TIERNEY—Just in terms of your opening comments you seem to also agree that the Victorian system is right up there in terms of international benchmarks.

Mr PHILLIPS—Yes.

Ms TIERNEY—But then you went on and you were quite critical, I gather, in terms of RIS documentation.

Mr PHILLIPS—What do you mean by documentation?

Ms TIERNEY—In terms of the compliance, and then there was a discussion about appendices and those things.

Mr PHILLIPS—Yes.

Ms TIERNEY—Is that the main area that you think needs improvement?

Mr PHILLIPS—There are two parts to that: there is a technical aspect, and technically Victorian RISs are the Rolls-Royce but they are very inaccessible to the average stakeholder. I did a RIS for the boxing and professional combat sports industry where you might say the average stakeholder was not that sophisticated. We got no comments for that RIS, and part of that was some excellent pre-consultation we did. We got the whole boxing and professional combat sports industry in a room and nussed it through but zero comments for RIS.

Ms TIERNEY—So the process is okay but the documentation for community stakeholders needs some improvement.

Mr PHILLIPS—Very much so.

Ms TIERNEY—In terms of expertise in the public service, you say there has been a flip.

Mr PHILLIPS—Yes.

Ms TIERNEY—You say there is not adequate expertise in the departments any more.

Mr PHILLIPS—Correct.

Ms TIERNEY—What can that be put down to? Is that in terms of just the number of staff that have been cut in departments? Is it the extra requirements that RIS and others have put in place over time? What is it?

Mr PHILLIPS—Very much the added requirements. The Victorian Guide to Regulation in the 90s was 20 pages. It is now well over 100 pages. Also when I was at the Office of Regulation and Reform our assessment rigour was, to be frank, quite low. With the VCEC when you submit the first draft you are about halfway there, very rigorous and average iterations would be, say, four iterations, four assessment memos for a Regulatory Impact Statement. Because it becomes so specialist and so technical the benefit is obviously the savings. The VCEC identified \$902 million over 10 years. That has been run out of this very rigorous and technical process, but if you like a cost is that the expertise has left the public service and that there is a danger that Joe Public finds some daunting documents.

The CHAIR—How do you get that balance, because you make note on your submission point 6 that—it is referenced here—the past 10 years the bar has been raised significantly in terms of the rigour of analysis. In the 90s, government departments prepared 80 per cent and, as you said, it has now flipped the other way around and they do not have the specialist skills in the departments to prepare a RIS. How do you get the balance right because if you are nearly saving \$1 billion over 10 years yet you do not have the expertise in the departments, is one trading off against the other? What is the balance that is right?

Mr PHILLIPS—That is difficult to answer. In my view the system is about right now, I think. Departments might be able to do smaller RISs themselves, and if we talk about proportionality of assessment and thresholds, potentially departments could do the smaller and less complex RISs themselves. There has been talk over the years about flying squads within the public service. I am not quite sure how that would work but there might be an officer at the VPS6 level and a couple of VPS4s to go around to departments knocking off the easy RISs. If they could do three or four RISs a year they would save some money, but I noted in my submission a VPS6 these days with labour on-costs is nearly cost \$200,000 per annum. You would need to do four or five RISs to make that worthwhile, and remembering that RISs are cyclical, a couple of years ago there were only 12 done in the whole year. Some years there are 25 to 30. They do jump around a bit, depending on sunseting and also government legislative programs.

Mrs PEULICH—Mr Phillips, your comment about trends to using outsourced consultants are interesting and I think are a reflection of broader trends. I accept your point that a level of technical expertise that is required has contributed to this trend.

Mr PHILLIPS—Yes.

Mrs PEULICH—I want to tease it out a little bit further, we have moved away from the integration of functions of departments to breaking down, segmenting, perhaps, different roles to ensure there are not any conflicts. Do you think that by using external consultants there is a higher degree of independence than having the work done internal to departments—number 1? Number 2, if a consultant stuffs it up or gets it wrong is it more politically convenient perhaps to have a consultant stuff it up than a department to stuff up a RIS or a BIA? Are you getting my drift?

Mr PHILLIPS—I am. Your second part of the question, no, it is not. It is outsourcing the process risk because the consultant needs to get it done in time and get everything signed off, but the political risk always resides with the government, so with the minister. That is what I said initially. A RIS is actually the minister's document. At the end of the day under the Subordinate Legislation Act they own the RISs. They could privately blame the consultant or put him on the 'never to work again' list, but ultimately it is the minister who will take that recourse. What was the first part of your question?

Mrs PEULICH—Does it add a level of independence?

Mr PHILLIPS—Independence, yes. That is a very good point. Departments can wriggle out of RISs, and I have seen it before. RISs are onerous, they are frustrating, they are expensive sometimes, and while the minister decides, it is on the advice of the government. Sometimes if things are line ball or a little bit grey then the consultant can keep them honest. Also the VCEC, particularly with sunseting regulations keeps a list on what is coming up. They might make a phone call to the department and check, 'Are you considering doing a RIS? We haven't heard from you. It's due to sunset in 12 months.' Consultants also are independent. They do not have any barrow to push. There is always a danger of capture with the department but I think the independence of a consultant does bring a new set of eyes and independence to the process.

Mrs PEULICH—Thank you.

Ms PENNICUIK—I wanted to talk about one of the comments you made about business impact assessments saying that they are focused too narrowly on business impacts and not enough on the community, individuals and environment. I wonder if you could perhaps expand on that.

Mr PHILLIPS—Yes. The name business impact assessment sums it up. It is designed to assess business. Business is very important, the engine of the economy and employment and so forth. The trigger for a business impact assessment was a significant impact on business or a section of the economy. It was very narrowly focused on the business or the economic side. Implicitly you are ignoring the environmental and social aspects. Now, the VCEC sought to get around that issue in the Guide to Regulation by arguing that if a BIA was triggered you would need to look at those other things but you needed that trigger to start with. If you triggered the business impact assessment you would then need to look at environmental and social issues as well because in the early days departments would often say, 'Social—it's not business impact, we don't need to look at it.'

My understanding is that in the Securing Victoria initiative, released late last year by the government, there was some discussion about broadening the business impact, a legislative impact assessment; that is any legislation that has a significant impact on business, a section of the economy, a section of society or the environment. It might be words along those lines. I assisted the Queensland government about 18 months ago to set up their system. I have said Victoria has the best system. Queensland may now have the best system on paper but I have not really seen evidence of the implementation of that system. But the Queensland system was very much broader than the BIA. It includes social, environmental and economic impacts.

Ms PENNICUIK—If I could follow up, Mr Harding and Dr Rivers were talking about the trigger of

half a million dollars, so under that there is not a requirement—there was a bit of a discussion about other triggers.

Mr PHILLIPS—Yes.

Ms PENNICUIK—Then we talked about an example of one that was not followed through because it was going to cost \$42 million. It was always about the dollars—whether it was \$1 million, half a million, \$42 million. What scope is there in your experience for another aspect to be the reason why you would not have a RIS or why you would not actually follow through the regulation, even if it does cost \$42 million.

Mr PHILLIPS—The dollar threshold is the primary threshold that is used but there are guidelines: the Subordinate Legislation Act guidelines or Premier's Guidelines—and they are attached to the back of the Victorian Guide to Regulation. They are very detailed guidelines, and they do list a lot of factors that should be considered. Not many people know about them, they are stuck way up the end of a very lengthy document as an appendix. There are already existing quite a number of other factors, other than the dollar threshold, that can trigger a RIS, but people always go to the dollar threshold because it is certainly measurable in the first instance.

Ms PENNICUIK—But isn't that a problem? Is that a problem?

Mr PHILLIPS—It could be and that is why departments need to make a case, or stakeholders, that these things should be identified, yes.

Mr SCHEFFER—I wanted to come back, just quickly, to the issue of consultants. You mentioned in your presentation that there is a variability of quality consultants, and one solution might be to establish a panel.

Mr PHILLIPS—Yes.

Mr SCHEFFER—Keeping that in mind, the other issue is that it is ultimately government's responsibility, the minister's responsibility. That means that public servants who you were saying are declining in their expertise in the area still have to assess whether you, for example—or the people who presented before—have done the work properly. Their expertise is, in a sense, less than yours, so how does that work? They have still got to be on top of whatever it is they do.

Mr PHILLIPS—They do. In a sense they become project managers rather than being at the coalface, but there is a loop there that I think addresses that issue and that is the VCEC. The departments do get informal feedback about how the consultant performed; also the assessment memorandum. There are official documents issued upon each draft of the RIS. I have seen a memo 30 pages long with comments and criticisms, so you would not necessarily be rushing back to that consultant. There is also, I think I mentioned in my submission too, a questionnaire that the VCEC asks following each RIS and there is a 'tick a box' for prices there. You can get some sort of range of prices. I am not privy to it, I do not know, but I can tell you what my prices are if you are interested.

The VCEC loop does, I think, keep public servants informed. There is no information asymmetry—I think you were getting at—between what the consultant does, the quality of their work, how good a job they are doing for the department.

Mr SCHEFFER—How would we know whether it is better to do the model that you are describing—both financially and in terms of processes—whether it is more efficient for government to put more resources into souping up their own departmental units to do it, rather than contracting it out? How could we assess that?

Mr PHILLIPS—You could approach the VCEC and find out what consultants costs are. As I said that information is collected at the end, work out a ballpark figure of that cost and then simply look at your resources required. It might be three VPS6s and four VPS5s and a couple of admin staff, so you can do it that way. Then there is the problem of committing to an action. As I said I have raised issues here but I probably

have not emphasised how well the current system is working, not without flaws or wrinkles, but it really is working very well.

Ms TIERNEY—My question is in a similar vein. For the department to be an informed and active stakeholder throughout the process, how can that be ensured and not through a model that you have just described which is really safeguards at the end of each stage through the VCEC?

Mr PHILLIPS—A lot of it is a working relationship with the department and, generally speaking, the consultant does work cheek by jowl with the department and sometimes we embed ourselves. We might be at a desk in the department for a few days collecting data and information. It would be irresponsible of the department to brief a consultant to go away, write a RIS and come back in three months with a RIS. That has happened. I made that mistake early in my consulting career where they probably let me have too much latitude and it was not probably a very good product at the end of the day.

So I have learnt through experience that engaging the department from the outset and the VCEC that we probably have three or four meetings through the process. Communication is the way to go. I want to dispel any thoughts about consultants going off and doing their own thing. It really is a close working relationship.

Ms TIERNEY—I suppose the concern is how do we ensure that departments have and maintain a knowledge base that is good enough and vigorous enough to even project manage the process?

Mr PHILLIPS—Okay. I think I mentioned that before when I was talking about regulatory liaison officers. There should be in each department maybe two, three or four staff that are regulatory experts for that department. Some departments have it, some have it in name only and some do not have it at all. That might be something coordinated out of the Better Regulation Unit of Treasury. That would be the lead agency. They could have quarterly meetings and updates and regular training. RISs are very technical. I have just finished a Master of Regulatory Studies at Monash University and it is now requiring postgraduate level skills to be able to write a RIS these days.

The CHAIR—Is that not the problem? You continue on. I mean, you are saying at one level that it has become very complex for stakeholders to understand. On one hand you are saying that and you are saying now that it is becoming very complex and the level of skill required is not even within the departments any more.

Mr PHILLIPS—Yes.

The CHAIR—You are saying that they are becoming now so specialised and so detailed, yet on the other hand you want to keep it simple and maintain it within the departments. You have one extreme to the other.

Mr PHILLIPS—Departments would only do it themselves if it were the simpler type of RISs. The suggestion I think I made before about having the technical assessment and large appendices up on line and independently assessed by the VCEC, and a much smaller report for public consumption—of course they can go back and check out the assumptions, the discount rates and all of that on line. The very early Guide to Regulation recommended a RIS be 20 pages. As I said, the average would be over 100 these days.

Mrs PEULICH—But an executive summary may be 20.

Mr PHILLIPS—Yes.

Ms PENNICUIK—What you were just talking about there, would that go to your other point which is about training or information for stakeholders because public service officers focus on the policy rather than the regulation. So stakeholders produce lengthy submissions only to receive a form letter/fax saying they are not addressing regulations. But you would need to have that glossy, as you described it, describing what the outcome of the RIS is but not too technically. You would have to have that out at the time so the public could make the comment—

Mr PHILLIPS—Absolutely.

Ms PENNICUIK—So it would not be the end—

Mr PHILLIPS—Yes, absolutely. It is a difficult one. I am not sure I know the answer to that.

Ms PENNICUIK—I know, but you have made the point and it is one I have heard a lot that people cannot wade their way through a RIS.

Mr PHILLIPS—Yes, and often RISs deal with relatively narrow regulatory aspects, although the scope is to do with policy. If there are, let's say, narrow regulations, people may not be happy with the policy. Maybe you need to educate the public about what a RIS can and cannot do. You might get a lot of submissions for something, only to get a form letter saying, 'That deals with the overall policy, this was about fees and forms. Thank you for writing,' and that can become frustrating too.

Ms PENNICUIK—However, there needs to be a process to deal with it.

Mr PHILLIPS—I think education.

The CHAIR—All right. Mr Phillips, thank you very much, and I thank the committee members for their questions. As was indicated we will provide you with a copy of the transcript for you to review and again this inquiry will continue and we will look forward to the outcome. Thank you very much.

Mr PHILLIPS—Thank you.

The CHAIR—Having said that we will cease the hearing now.

Witness withdrew.

Committee adjourned.