



Australian Government

Department of Finance and Deregulation
Office of Best Practice Regulation

Statement to the Victorian Environment and Planning Legislation Committee

20 June 2013

Thank you for the opportunity to make an opening statement to this inquiry process.

I will describe the role of the Office of Best Practice Regulation, outline the Australian Government and COAG regulation impact statement processes, and discuss OBPR compliance reporting.


Office of Best Practice Regulation

The Office of Best Practice Regulation administers both the Australian Government and COAG regulation impact statement processes. While there are many similarities between these two processes, there are also important differences, which I will expand upon during this statement.

The OBPR has quite a broad role. Its core roles are to advise government agencies on whether regulation impact statements are required, and to examine RISs and advise whether they meet the government's requirements and provide an adequate level of analysis.

Beyond those roles, the OBPR provides training and guidance to officials on the regulation impact statement requirements, provides technical assistance to officials on cost-benefit analysis and consultation processes, reports annually and on a website on compliance with the regulation impact statement requirements, and maintains a website publishing regulation impact statements.

The OBPR is a Division within the Department of Finance and Deregulation. The independence of the OBPR from the Department and ministers in its administration of the regulation impact statement requirements is provided through ministerial statements to Parliament by the Minister for Finance and Deregulation.



Both the Australian Government and COAG regulation impact statement processes are administratively based, and are not required by legislation.

Regulatory impact analysis and regulation impact statements

Regulatory impact analysis is the process of examining the likely impacts of a proposed regulation and a range of alternative options which could meet the government's policy objectives. Regulatory impact analysis contributes to better regulation by supporting sound analysis, informed decision making and transparency.

A regulation impact statement is a document prepared by the agency responsible for a regulatory proposal, following consultation with affected parties. It formalises and provides evidence of the key steps taken during the development of the proposal, and includes an assessment of the costs and benefits of each option.

The Australian Government regulation impact statement requirements

When does a regulation impact statement need to be prepared?

A regulation impact statement is mandatory for all decisions made by the Australian Government and its agencies that are likely to have a regulatory impact on business or the not-for-profit sector, unless that impact is of a minor or machinery nature and does not substantially alter existing arrangements. This includes amendments to existing regulation and the rolling over of sunseting regulation.

The regulation impact statement requirements apply to all Australian Government departments, agencies, statutory authorities and boards that review or make regulations that have an impact on business or the not-for-profit sector, including agencies or boards with administrative or statutory independence. The agency responsible for bringing the proposal to the decision maker is also responsible for ensuring the RIS requirements are met.

Regulation is defined very broadly. Regulation is any 'rule' endorsed by government where there is an expectation of compliance. It includes primary legislation and legislative instruments (both disallowable and non-disallowable) and international treaties. It also comprises other means by which governments influence businesses and the not-for-profit sector to comply but that do not form part of explicit government regulation (for example, industry codes of practice, guidance notes, industry-government agreements and accreditation schemes).

'Regulation' does not include grant programs, government procurement of specific goods or services or government agreements unless these processes impose more general regulatory requirements on the organisations receiving funding or providing goods/services.



Regulation impact statement process

The first step of the regulation impact statement process is the preliminary assessment. This is where the OBPR determines whether a regulatory proposal requires a regulation impact statement or whether it is minor or machinery in nature and does not require one. It is the responsibility of the agency responsible for the regulatory proposal to contact the OBPR and provide the necessary information for this assessment.

Once the OBPR determines that a regulation impact statement is required, the agency is responsible for its preparation. The OBPR assesses whether a draft regulation impact statement is adequate. To be assessed as adequate, a RIS must have a degree of detail and depth of analysis that is commensurate with the magnitude of the problem and the size of the potential impact of the proposal.

Agencies are encouraged to quantify impacts where this is possible. Agencies are required to identify data sources and assumptions made in preparing analysis, and to identify any gaps in the data underpinning the analysis.

There are seven elements to a regulation impact statement: problem; objectives; options; impact analysis; consultation; conclusion and recommended option; and implementation and review. More information on each element is provided in the *Best Practice Regulation Handbook*.

A regulation impact statement assessed as adequate by the OBPR must be provided to the decision maker prior to a decision being made on the regulatory proposal.

Once an announcement is made on the regulation, the regulation impact statement is required to be published, as soon as practicable. The OBPR maintains a website of all RISs (as of 1 July 2010).


Non-compliance and exemptions

Where the OBPR determines that a regulation was introduced or amended without a regulation impact statement, the agency is reported as non-compliant on the OBPR website and the agency is required to prepare a post-implementation review.

There is scope for a proposal to be exempt from the RIS requirements under exceptional circumstances, but such an exemption can only be granted by the Prime Minister in writing. The fact of the exemption will be published on the OBPR website and a post-implementation review will be required.

Changes to the Australian Government process

The Australian Government has announced changes to its regulation impact statement process, including moving to a two-stage assessment process



(<http://www.finance.gov.au/deregulation/riareview-final-govt-response.html>). These changes reflect the recommendations of the *Independent Review of the Australian Government Regulatory Impact Analysis Process* conducted by Mr David Borthwick AO PSM and Mr Robert Milliner in the first half of 2012.

The Council of Australian Governments regulation impact statement requirements

When does a regulation impact statement need to be prepared?

The COAG regulation impact statement requirements apply to agreements or decisions to be given effect, whether at the Commonwealth or State/Territory level, or both, through principal and delegated legislation, administrative directions or other measures which, when implemented, would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done. This does not include purchasing policy or industry assistance schemes.

The requirements do not apply to agreements or decisions that result in regulation that is minor or machinery in nature and do not substantially alter existing arrangements.

The requirements apply to decisions of COAG Councils and intergovernmental standard-setting bodies, however they are constituted. This includes bodies established by statute, or administratively by government, to deal with national regulatory problems.

Regulation refers to the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community, as well as to those government voluntary codes and advisory instruments for which there is a reasonable expectation of widespread compliance.

Development of voluntary codes and other advisory instruments should take account of these principles and assessment requirements where there is a reasonable expectation that their promotion and dissemination by standard-setting bodies or by government could be interpreted as requiring compliance. For example, should non-compliance with provisions of a voluntary code be considered as evidence by a court or an administrative body when determining compliance with statutory obligations, such advisory documents are subject to the review process.

Regulation impact statement process

The first step of the regulation impact statement process is the preliminary assessment where the OBPR determines whether a regulatory proposal requires a regulation impact statement.



Compared to the Australian Government regulation impact statement process, the main difference is that the COAG regulation impact statement process is a two stage process. COAG Councils and intergovernmental standard-setting bodies are required to prepare both a draft and a final RIS.

A draft RIS is prepared for consultation and a final RIS is prepared to inform the regulatory decision.

The purpose of a draft RIS for consultation is to canvass the regulatory options under consideration to determine the relative costs and benefits of those options. The purpose of a final RIS for decision makers is to draw conclusions on whether regulation is necessary, and if so, on what the most efficient and effective regulatory approach might be, taking into account the outcomes of the consultation process.

Similar to the Australian Government process, COAG Councils and intergovernmental standard-setting bodies are responsible for drafting regulation impact statements and the OBPR assesses compliance with the COAG requirements. The requirements for a COAG regulation impact statement are set out in *Best Practice Regulation: A Guide for Ministerial Councils and National Standard-Setting Bodies*.

The final RIS for decision makers should be forwarded to the OBPR prior to a decision being made by a Ministerial Council. The OBPR will assess the RIS within two weeks of receipt. The assessment will focus on whether the RIS meets the requirements set out in this document, including:


- whether the RIS Guidelines have been followed;
- whether the type and level of analysis are adequate and commensurate with the potential economic and social impacts of the proposal; and
- whether the RIS demonstrates that the preferred option results in a clear net benefit to the community.

After a decision is taken, the final RIS, which should be of a standard suitable for publication, will generally be made public, including on the OBPR website.

Non-compliance and emergencies

Where the OBPR determines that a regulation was introduced or amended without an adequate regulation impact statement, the COAG Council or intergovernmental standard-setting body is reported as non-compliant on the OBPR website.

A COAG Council may decide that a situation requiring a regulatory response is an emergency. In these cases, a RIS need not be prepared before the regulation comes into



effect. However, the Chair of the Council must write to the Prime Minister before making the regulation:

- seeking agreement to waive the need for a RIS; and
- explaining why the situation was an emergency and why no transitional measures were available.

If the situation was an emergency, the COAG Council would be expected to prepare a RIS within 12 months of making the regulation. Alternatively, in emergency cases the briefing material prepared for a COAG Council can be provided to the OBPR, which will advise whether the key elements of a RIS are addressed in such material. If so, the OBPR can assess the Council as being compliant with the COAG Guidelines.

There is scope for two or more jurisdictions to request an independent review of the regulation impact statement, but that process has not been utilised.

Compliance reporting

For transparency, the OBPR publishes on its website each RIS, instance of non-compliance and exemption from the RIS process. The OBPR has a twitter account, and tweets all updates to its website.

The website also includes compliance tables, which show compliance percentages for the current year and previous years. The advantage of the website is that compliance reporting is effectively 'live'.

The OBPR prepares a report annually on compliance with the Australian Government and COAG regulation impact statement requirements. While the OBPR continues to prepare an annual report on compliance with the regulation impact statement requirements, the focus has shifted to live compliance reporting via the website and publishing a less detailed annual report.