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Compliance with Regulatory Impact Analysis Requirements

2007 Evaluation

Report

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Preface

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NZIER was established in 1958.

Authorship

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Key findings

This evaluation involved:

- in-depth assessments of 8 regulatory impact analyses (RIA), considering the extent of compliance with the government's RIA requirements, the standard of the analyses, and the process followed
- an assessment of 12 regulatory impact statements (RIS), with a focus on the effectiveness of their communication function.

We concluded from the in-depth assessment that 3 out of the 8 RIAs were adequate, and that the remaining 5 were not adequate. The main areas of weakness are problem definition, showing the scale of the issue, and the analysis of cost and benefits. The risk assessment tends to be weak also.

Of the 12 regulatory impact statements (RIS) we found that 7 did not satisfactorily perform their communication function. The remaining 5 were satisfactorily, but none were particularly good. The areas of weaknesses found were similar to those described above for the RIA assessment.

Consultation is usually done well. Close attention is paid to submissions and proposals are amended accordingly. Other pluses are that the statements were all short and in relatively plain language.

The more in-depth investigation of the regulatory impact analysis (RIA) process showed that sometimes the regulatory impact statement did not do justice to the analytical substance behind the proposals.

The in-depth investigation also revealed that analysts and managers in departments are strongly in favour of improving the quality of advice and policy production process. But there were two different types of attitudes toward the regulatory impact analysis. About half of the agencies we interviewed have explicitly built in RIA responsibilities into their processes. The strong commitment to the RIA process stemmed from a belief that a good RIA would give a strong foundation to the policy advice (and thus the Cabinet paper and RIS).

The other half of departments had no special process. RIA was regarded as 'reflecting good practice' and 'helpful' but one that 'good policy analysts' would follow 'intuitively'.

All RIAs we rated as adequate originated from departments with explicit responsibilities or structures for RIA processes. This raises an interesting hypothesis of a causal relationship between those structures and outcomes. It is difficult to draw any strong conclusions from this small sample. But we believe, from experience, that the co-existence of strong processes and good outcomes is

likely to be linked to a third variable: a focus on the quality of processes and quality of the work.

Areas we think are worthy of attention by the Regulatory Impact Analysis Unit and departments are:

- clarifying the purpose of the RIS and how it is different from a Cabinet paper
- rationalising the guidance material
- amending the approach to adequacy certification
- raising expectations of the RIA/RIS quality
- providing support for those with no or little experience.

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1. Introduction

This report is the first evaluation of compliance with the Regulatory Impact Analysis (RIA) requirements for regulatory proposals that are unlikely to have a significant impact on economic growth under the enhanced RIA regime that came into affect on 1 April 2007.

Agencies undertaking such analyses self-certify that the proposals are consistent or otherwise with the Code of Good Regulatory Practice and whether the RIA and RIS are adequate, that is, comply with the requirements set out in Cabinet Office Circular CO (07) 3 and the RIA Guidelines.

The overall objective is to improve RIAs and RISs and thereby the quality of proposals for regulatory change. The evaluation would contribute to this by providing information on current compliance, on the processes followed by agencies and the extent to which that led to compliance with the guidelines and requirements.

In broad terms an RIA is adequate if it convincingly establishes that the proposed regulatory change is needed because the current framework cannot deal with the problem, that appropriate analysis was undertaken given the issue's magnitude, and that adequate consultation was undertaken

In similarly broad terms, a Regulatory Impact Statement (RIS) should provide a summary of the required information, focus on the analysis of options, be able to be stand alone, keep background to a minimum, specify assumptions made about drivers of the problem and how the solution will influence the drivers, and examine full range of economic, social, cultural, health and environmental outcomes.

Overall, the effort has to improve the information for the decision-making process, and fulfil a disclosure role.

2. Approach to the evaluation

In accordance with the Terms of Reference, this evaluation focuses on "the process followed by [agencies] to adhere to the RIA guidelines, and the extent to which that process resulted in the final RIA (including RIS) complying with the RIA requirements (as set out in *Cabinet Office Circular CO(07) 3* and the *Guidelines on the Regulatory Impact Analysis Requirements*)."

The evaluation methodology was provided by the RIAU. It involved:

- in-depth assessments of 8 RIAs (four selected from the agencies with the greatest number of regulatory proposals over the review period, and four from agencies selected by the Regulatory Impact Analysis Unit (RIAU)). In brief, we were asked to look at:
  - the extent of compliance with RIA requirements
  - the overall standard of each RIA and its strengths and weaknesses
  - the process followed and any constraints/facilitators
  - how the process and constraints may have contributed to strengths and weaknesses identified
- a summary of our impressions from assessments of 12 RISs selected by the RIAU, with a focus on how effective each was in communicating necessary information to decision-makers and other interested parties – the analysis and communication tasks.

For the 8 in-depth assessments we assessed the RIA statements in the Cabinet papers and the RISs (a total of 7; one agency deemed that an exemption applied). We interviewed identified contacts at the authoring agencies. We also looked at discussion papers and other related documentation made available by agencies. A short 2-3 page assessment was prepared for each of the 8 RIAs. Drafts were provided to the authoring agency for comment. Section 3 summarises the main findings.

A one page assessment was prepared for each of the 12 RISs against a common framework (Table 1). This did not involve an assessment against the RIA adequacy criteria, but focused on the effectiveness of the RIS as a communication device to decision-makers and other stakeholders. Section 4 summarises the key findings.

Table 1 Framework for one page assessments

Complete – is all the required information included in the RIS?

Correct – is the information free of errors?

Convincing – are the analysis and conclusions supported by a clear logic, an appropriate assessment of costs and benefits, and supporting evidence?

Contingencies – does the statement show consideration of key risks and how they are mitigated?

Consultation – does the statement show evidence of stakeholder consultation and how any issues raised have been dealt with?

Clear and concise – is the material communicated in a plain language, and is the statement of an appropriate length

Overall – is the statement overall effective at communicating the required information to the decision-makers and stakeholders.

Source: NZIER

3. Findings from 8 in-depth evaluations

3.1 Overall level of compliance

Our assessment of the 8 in-depth assessments we undertook is that:

- 3 were adequate
- 5 were not adequate.

We detected two distinct groups; RIAs (and the associated RISs) were either well below what could be expected or of reasonable quality. Even so, the latter did not rate very highly. It was clear, though, that with some additional effort those RIAs and their RISs could be very good.

There is a close correlation between our assessment of the adequacy of the regulatory impact statements and that of the regulatory impact analysis. This is a helpful finding for future monitoring: if the RIS is not of high quality, chances are that the quality of the RIA was similarly disappointing. But in a few cases it was clear that there was much more substance than was apparent from the RIS.

Seven of the eight Cabinet papers we looked at had a RIS attached. All seven certified that the RIA met the adequacy requirements. Possible reasons for this are:

- **capability**: in a number of cases the main analyst was inexperienced at preparing regulatory impact analyses. For example, in the case of one agency the lead group would prepare a Cabinet paper only on rare occasions. (Some also mentioned that this was the first time they undertook the RIA under the new requirements)
- **clarity**: we detected uncertainty about the requirements; some interviewees thought the requirements ambiguous, questioned the distinction between preparing a Cabinet paper and undertaking a RIA, or were not sure whether the RIS had to be able to stand-alone or would always be read with a Cabinet paper
- **feasibility**: a couple of people we interviewed mentioned that it may not be feasible to sign-out a paper that states the RIA is inadequate. One agency faced the problem when it felt that due to timing constraints it had not been able to undertake adequate consultation
- **tougher standards**: perhaps we expect more than decision-makers do. But that is not what we have found in previous evaluations of policy advice undertaken for various government agencies when we checked with the intended audiences. In subsequent audits it may be useful to ask Ministers and their advisors directly what their impressions are.

3.2 Strengths and weaknesses of the RIAs

The overwhelming area of weakness was the analysis of scale and scope of the issue and the closely related issue of costs and benefits of change.

In only a few cases was there a serious attempt at assessing the relative sizes of benefits and costs in a qualitative sense; quantification was even rarer. A fully quantified cost benefit analysis may not always be appropriate or possible. The RIA requirements are only that the analysis must be of an appropriate level given the magnitude of the proposal. But in most cases even a basic qualitative cost benefit assessment appeared to have been put largely in the too-hard basket; basic indicators of current volumes or numbers likely to be affected by the proposal were missing. For example, it can be sufficient to state that a proposal affects 3 small firms on the one hand, or 10,000 employees, or five transactions a year. Some of that information was readily available (even mentioned in discussion documents); it had just not been exploited as part of the RIA nor documented in the RIS.

Generally speaking, the risk assessment tends to be weak also. There was just one reasonably good example of risks having been considered explicitly. This was reflected in a brief table in the RIS summarising risks and mitigation.

In at least three out of the eight cases the problem definition was weak, leading to a questioning of the need for change or the rationale for the preferred option. In three out of eight cases the key features of preferred and/or alternative options were not made clear.

Generally speaking, our impression was that consultation tended to be adequate, even though it was not always reflected in the RISs, or even Cabinet papers. In one case the compressed timeframes did not allow consultation, and in another case it appeared that one important group had not been consulted (yet).

3.3 Process followed

The interviews revealed a range of different approaches and philosophies to RIA.

Half the agencies surveyed have explicitly built RIA responsibilities into their processes. One agency set up a special RIA committee with documented processes; another has RIA as a performance expectation; another has ‘named’ RIA experts for people to draw on for advice. RIA requirements are considered early on in the process and explicitly built in the work programme/project plan. The strong commitment to the RIA process stemmed from a belief that a good RIA would give a strong foundation to the policy advice (and thus the Cabinet paper and RIS).

The other half of departments had no special process. The people interviewed at these agencies believed that the thought-process promoted by the RIA ‘reflected good practice’ and was ‘helpful’ and one that ‘good policy analysts’ would follow

'intuitively'. But certainly in two cases it was clear that the RIA/RIS was an afterthought.

In most agencies, the author would determine the adequacy of the RIA/RIS and then rely on the usual internal peer review and sign-out processes and consultation with other agencies. Sometimes the RIAU is consulted where the requirements were felt to be ambiguous.

In one agency the special RIA committee provides a recommendation about adequacy to the responsible policy manager, who would then decide how to proceed.

There was mixed awareness of the Code of Good Regulatory Practice; some of the interviewees indicated they had 'heard of it'. But three out of the eight agencies indicated that the Code was explicitly built in their process for determining adequacy.

Most interviewees were aware of the Test for Significant Impact on Economic Growth. Some interviewees mentioned that the Test was ambiguous. However, in just a few cases there was doubt about the 'answer' to the test, and in those cases the RIAU was consulted.

Bar one, none of the agencies had a comment on the exemptions. The exception was a case where there was some uncertainty about the regulatory vehicle that was going to be used to progress policy options, and ultimately a call was made that a declaration about the regulatory impact assessment or the provision of a RIS was not required at this stage. The decision was made following discussion with the RIAU.

Almost all RISs were published on a website; some were hard to find or had disappeared following website revamps. Just in one case was release not approved by a Minister – it was not clear from the information gathered during the evaluation process why it was not.

3.4 Barriers, facilitators and lessons

All RIAs we rated as adequate originated from departments with explicit responsibilities or structures for RIA processes. The sample is too small to confidently state that there is a relationship. It certainly would be a big leap to assume a causal link. There may not even be any direct link.

Agencies offered a number of different reasons for shortcomings:

- **time constraints:** in a few cases there was only little time for the analysis or the consultation process. Sometimes the timing was imposed by Ministers or Cabinet committee process; in a couple of cases the responsibility for carrying through elements of the policy work was transferred to the authoring agency

late in the process; they can then only work with the materials they have inherited

- **inexperience**: there were instances where the main author was new to the job or was part of a group that only write *any* Cabinet papers on rare occasions
- **answer-driven**: some interviewees believed they were working to implement an option that was already 'decided' or was a 'no-brainer'. The implication seemed to be that more in-depth analysis of costs and benefits was therefore not necessary. In our view this does not follow
- **ambiguity of requirements**. There were mixed views on the helpfulness of the guidance provided. Some found the guidelines very useful, some about right, some far too high level, and yet others who felt the material too detailed with too many questions and references to be useful. A couple mentioned that direct contact with the RIAU on specifics was helpful; a couple of others felt frustrated.

Each reason may explain why a RIA may not be adequate. It does not explain why all RIAs were certified as adequate. On the basis of this sample, self-certification is not yet working as expected. It seems to us that there are few incentives on analysts or responsible managers to self-declare that their analysis is inadequate. To overcome the incentive and feasibility issue (see 3.1), one of the agencies has tried to devise sample text to allow a declaration of inadequacy that is neutral. This could be something the RIAU may consider promulgating to other agencies. An alternative would be to allow for more categories than the current fail or pass in the self-assessment.

Timing constraints and inexperienced staff (and a degree of confusion around the time the 'new' requirements were introduced) are features of the more general issue of resource constraints. No agency mentioned resource constraints explicitly as an issue. Solutions here lie in the approach to internal quality assurance, as well as management. There are implications in the generic areas of staff training, looking at the robustness of the QA process, better use of expert policy advice support, as well as the process of work acceptance, prioritisation, and allocation.

Our own observation is that there are too many cross-referenced statements of requirements and 'help' documents. It was also clear from the responses that a number of requirements (and in particular the Code of Good Regulatory Practice) were not well-known at all. The information in each of the help documents is reasonably helpful, but analysts would be helped if the paper trail were rationalised. That is, it should be made much shorter, with all requirements and guidance put in a single resource – for example it could be turned into a single top page with the key requirements and principles, with a small number of supporting pages providing guidance. Less is more, in this case.

4. Review of Regulatory Impact Statements

We assessed 12 RISs in terms of their effectiveness in communicating necessary information to decision-makers and other interested parties. We assessed each RIS according to the framework in Table 1.

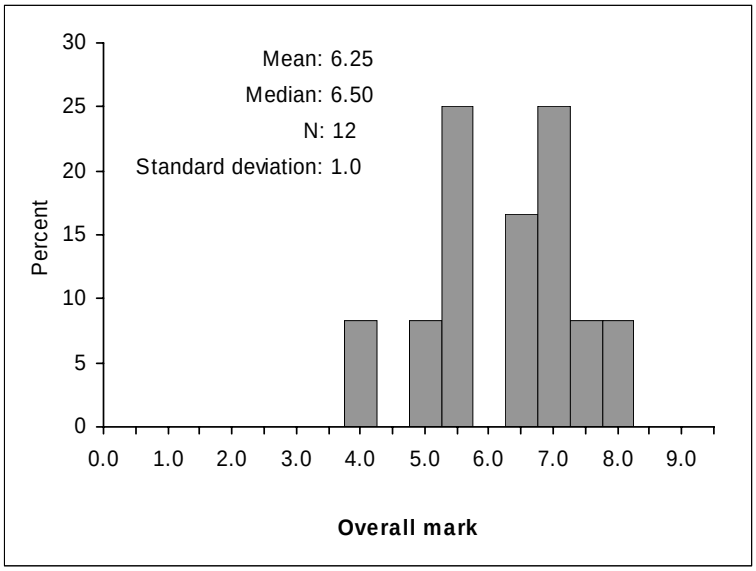
To give a sense of the spread of quality we gave each RIS a mark out of 10, with 5 being poor, 7 satisfactory, and 8 good. This mark is an experience-based judgement on how well the RIS overall does its job as a stand-alone piece. These judgements are made without taking into account any pressures and constraints faced at the time. This is because we do not have information about pressures and constraints, and also because to a customer (the reader) such explanations are generally not valid justifications; management is there to resolve such constraints.

Strictly, the review of RISs is not intended to make a judgement on whether the RISs are adequate as set out in the RIA Guidelines. But, looking at the correlation between the quality of the RIS and the RIAs we looked at in-depth, those RISs with a mark of 7 or higher are likely to correspond with adequacy.

4.1 Overall findings

Overall, the results are disappointing. We rated well over half of the sample as failing in their task; 42% we rated as satisfactory or better. A similar proportion was rated as poor. Just one paper we rated as good. See Figure 1. [1]

Figure 1 Summary of assessment results
Percent of Regulatory Impact Statements



Source: NZIER

[1] The patterns do not change if we also include the 7 RISs we assessed as part of the in-depth assessments.

4.2 Areas done well

The majority of the RISs we assessed displayed the following strengths:

- **Short.** RISs tended to span about 4 pages which appeared to be about the appropriate length for the issues under consideration.
- **Plain language.** There was a welcome absence of unnecessary jargon and bureaucratese. But in a number of cases the problem could be explained better.
- **Consultation**. Most of the RISs showed evidence of a reasonable amount of consultation with stakeholders as part of the process of developing the advice. We also saw some pithy and carefully worded summaries of issues identified in the consultation and how they were dealt with.

Most RISs used the template provided and used the appropriate headings. Where they did not, it tended to be because the RIA/RIS process had begun before the 2007 changes to the approach. The RISs we judged to be satisfactory tended to be useful as stand-alone documents.

4.3 Areas for improvement

The main weaknesses in the sample are as follows:

- **What is broken?** A few papers struggled to communicate what the problem really was. Often this seemed to be related to a lack of a credible framework. This then also undermined the rationale for change and option selection, particularly when combined with an absence of cost-benefit analysis.
- **How big and who is affected?** Too many papers struggled to give a sense of the scale of the issue, and most did not consider how different groups would be affected. This weakness can often be resolved with only a limited amount of effort, citing for example the number of adverse events, or the number of entities or people affected.
- **Costs and benefits?** The biggest concern is the number of proposals in this sample that omitted a credible assessment of relevant costs and benefits, whether they be financial or in terms of other outcomes (health, freedom, etc). For example, how effective in qualitative or quantitative terms would a proposal be at reducing adverse events. Often the omission betrayed a lack of a framework that would have brought out the trade-offs, for example, between accuracy and cost or the cost and benefits of dealing with a regulation that captures some people or activities it shouldn't, or does not catch all those it should.
- **Risks?** Just a few statements explicitly considered key policy risks and how these would be managed. None really outline the risk in the analysis (strength of evidence, etc.).
- **Stand-alone?** The poorer quality RISs did not convey the necessary information to be of much use as a stand-alone document. (In some of the RIA-related interviews we conducted it transpired that there a lack of awareness that the RIS should be a stand-alone document).

5. Conclusions and future steps

Overall, the assessment of the RIAs and the quality of RISs show up similar results. Overall around 60% of these outputs were not satisfactory. The main areas of weakness tended to be around problem definition and the size of the issue, and the analysis of cost and benefits.

Consultation seems to be an area of strength. Another silver lining is that our assessment of the RIA process identified that in some cases there was more analytical substance behind the proposals than was being communicated in the RIS.

We conclude with our suggestions for using these findings to improve the quality of RIA/RISs.

RIAU

The key weaknesses that we identified are issues for departments to work through and address. However, beyond promulgating the findings, the RIAU should also consider the following:

- **Clarify the purpose of the RIS** and how it is different from a Cabinet paper. This would include explaining that the RIS has an audience beyond Cabinet, and that it should have the ability to be a stand-alone document. A number of agencies struggled with the distinction between the two documents.
- **Rationalise the guidance material.** While the information in each document is reasonably helpful, there are too many cross-referenced statements of requirements and 'help' documents. We suggest *all* the requirements are summarised in a single short document – preferably one page – with some *brief* explanatory notes or guidance material attached; the greater the volume the least likely analysts are going to wade through it
- **Make the adequacy certification more meaningful.** There is a sense that it is simply not feasible to submit a paper that states that the RIA is inadequate. Hence agencies certify the RIA is adequate even when timelines limited consultation or analysis. One agency is trialling carefully worded statements to overcome this issue, and the RIAU could consider promulgating those; but there may be other options, such as self-assessment categories that communicate the degree to which adequacy standards are met.

We also suggest that future evaluations of compliance with the RIA/RIS requirements could be based primarily on a document-based analysis of RIS statements and associated Cabinet papers. The more in-depth interview-based process yielded some additional insights but it is relatively costly; it could be scaled-back or undertaken only every few years without loss of much information.

Agencies

We have identified a need for agencies to pay more attention to providing a clear statement of problem definition, a sense of scale, and costs and benefits. Looking beyond that we suggest the following actions:

- **Raise own expectations of the RIA/RIS quality.** The predominant culture appears to be that the RIA/RIS requirements are an add-on or afterthought. There are different approaches to change that culture. Some agencies have reflected the importance they place on the quality of the RIA/RIS in their processes (special committees, explicit performance expectations).
- **Provide support for those with no or little experience.** Our interviews uncovered that the task of undertaking the RIA and writing Cabinet papers and RISs were sometimes left to topic experts who only infrequently write policy papers.