



INDEPENDENT REVIEWS, RIS-LIKE PROCESSES AND THE REGULATION IMPACT STATEMENT REQUIREMENTS

February 2016

The [Australian Government Guide to Regulation](#) (Guide to Regulation) outlines the process for developing a regulatory proposal, including a Regulation Impact Statement (RIS).

The Guide to Regulation describes some special cases in the RIS process, one of which is that a RIS is not required for a regulatory proposal if an independent review or other RIS-like process has been undertaken by a department, agency, statutory authority, board¹ resulting in analysis that is equivalent to a RIS. In such a case, this analysis can substitute for the RIS. This approach aims to remove duplication between comprehensive review processes and RISs.

What has changed in 2016?

This guidance note has been updated to provide greater clarity for agencies on where they may be exempted from completing a RIS if a certified and robust internal RIS-like process has been completed.

What is a RIS-like process?

A RIS-like process includes other mechanisms used by agencies to assess a regulatory proposal. The main proviso for a RIS-like process is that it contains analysis of the regulatory proposal that is equivalent to what would otherwise have been required in a RIS. Depending on the quality and extent of the analysis (see “Requirements” further below), the following can be considered as examples of a RIS-like process:

- Green papers (documents published to encourage discussion on a given topic)
- White papers (documents containing proposals for action on a given topic)
- Internal departmental or agency reviews or reports or briefs.

Importantly, Cabinet Submissions are unable to be used as a RIS-like process due to confidentiality of Cabinet proceedings and documentation.

This is not an exhaustive list. Agencies may identify other processes which cover the same ground as a RIS. A key indicator that a process may be RIS-like is where there is clear duplication of analysis with that which would be required for a RIS. That is, a process or document that answers the seven RIS questions:

1. What is the problem you are trying to solve?
2. Why is government action needed?
3. What policy options are you considering?
4. What is the likely net benefit of each option?

¹ All referred to as ‘agencies’ in this guidance note.

5. Who will you consult about these options and how will you consult them?

6. What is the best option from those you have considered?

7. How will you implement and evaluate your chosen option?

Requirements

An important point to note when considering whether to use the analysis of an independent review or RIS-like process in place of a RIS is that the quality of the analysis or RIS questions answered in the document are not assessed for adequacy by the Office of Best Practice Regulation (OBPR). Instead, the agency is required to self-assess whether the review has followed a similar process to that required for a RIS and has adequately addressed all seven RIS questions.

All regulatory costs still need to be agreed by OBPR in the normal way, even though OBPR does not assess the independent review.

If a portfolio brings forward a proposal with net regulatory increases and offsetting regulatory savings are not included in the letter certifying the review or RIS-like process and agreed with the OBPR, the proposal can only proceed if the portfolio can demonstrate satisfactory progress towards its net objective. This requirement can be satisfied by the portfolio Deputy Secretary or delegate warranting in the letter certifying the review or RIS-like process that the portfolio's net regulatory objective will be met by the end of the relevant reporting period.

The self-assessment is done by way of a secretary / deputy secretary / chief executive (or delegate) letter certifying that the review or RIS-like process meets best practice, adequately addresses the seven RIS questions and provides confirmation that the regulatory costs have been agreed by OBPR. The certification letter should also include the regulatory burden estimate table quantifying the regulatory costs to businesses, community organisations and/or individuals.

It is best practice that the certified independent review or analysis resulting from a RIS-like process be communicated to OBPR before each major decision point, and published following any announcement of the decision. However, the final certified independent review or analysis resulting from a RIS-like process needs to be communicated to OBPR before a final decision. The analysis then needs to be published, including on the OBPR website, following the announcement of a decision.

Self-assessment of independent reviews and RIS-like processes

When assessing whether a RIS meets best practice, OBPR examines whether the RIS has considered the 10 principles and adequately addressed the seven RIS questions outlined in the Guide to Regulation.

Therefore, when you are assessing whether a review (or multiple related reviews) or RIS-like process contains an adequate level of information and analysis, you should also consider the 10 principles and seven RIS questions. You should pay particular attention to the following:

- Does it simply and clearly explain the problem and your objective?
- Does it justify that the problem is serious enough to warrant the Government's intervention?
- Does it examine a range of viable, genuine, policy options?

- Where the policy problem and circumstances are such that there are fewer than three options feasible for consideration, does the RIS-like process include a clear explanation why other alternatives are not viable or practical? Was this certified by the secretary, deputy secretary or chief executive (or delegate) in the certification letter?
- Have the benefits and costs of all the proposed options for businesses, community organisations and individuals been clearly analysed in a balanced and objective manner?
- Were the regulatory costs quantified and agreed by OBPR?
- Does it show how the impacts of the options would be distributed across the community, including on small business?
- Does it explain the purpose and objectives of consultation (before final decision)?
- Does it have an appropriate plan for consulting those affected by the policy (before final decision)?
- Does it demonstrate that the views of affected stakeholder groups have been considered?
- Does it recommend the option with the highest net benefit?
- Does it have a clear implementation and evaluation plan?
- Was your review or RIS-like process certified by the secretary, deputy secretary or chief executive (or delegate) and provided to OBPR before being considered by the decision maker?

You are encouraged to consult OBPR when preparing the review terms of reference or commencing a RIS-like process to ensure that each of the seven RIS questions will be addressed.

Assistance

If you have any questions about the use of independent reviews or RIS-like processes, or to seek input in preparing review terms of reference, email OBPR at helpdesk-OBPR@pmc.gov.au or call (02) 6271 6270.

Your portfolio Regulatory Reform Unit is also a useful source of information.

Further information on the RIS process is in the [*Australian Government Guide to Regulation*](#).

Frequently asked questions

Will OBPR assess whether the independent review or RIS-like process provides an analysis equivalent to a RIS?

No. The responsibility for that assessment rests with the relevant secretary, deputy secretary or chief executive (or delegate). If an agency wants OBPR to consider whether the analysis adequately addresses all the RIS questions, then it will be required to submit the analysis as a RIS for formal assessment and be subjected to the RIS requirements.

Do independent reviews or RIS-like processes have to be certified before consideration by the decision maker?

Yes. As with RISs, an independent review or RIS-like process needs to be certified by the relevant secretary, deputy secretary or chief executive (or delegate) before consideration by the decision maker. The certification letter needs to include the regulatory burden estimate table, which quantifies the regulatory cost of new regulations and include confirmation that the regulatory costs have been agreed by OBPR. Where fewer than three options have been examined, the letter needs to also certify that the policy problem and circumstances are such that fewer than three options are feasible for consideration.

Does the independent review or analysis of the RIS-like process have to be published?

Yes. The analysis needs to be published, as a minimum on the OBPR website, following the announcement of a decision.