Finalising and Publishing a Regulation Impact Statement

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The User Guide to the Australian Government Guide to Regulation details how to develop your regulation impact statement (RIS); have it assessed by the Office of Best Practice Regulation (OBPR); and meet the transparency requirements of the RIS process. The User Guide should be read alongside the Australian Government Guide to Regulation.

Transparency is one of the main purposes of regulatory impact analysis. The publication of RISs and information about their adequacy is critical to transparency.

This guidance note aims to provide you with more detailed information on meeting the publication requirements of the RIS process.

When does a ‘Final’ RIS need to be published?

The Final Assessment of a Standard or Long Form RIS must be undertaken by the OBPR before a final decision is made by decision makers. It is up to you to decide when a Final Assessment is undertaken. Following the OBPR’s Final Assessment, the RIS can be provided to the decision maker for a final decision, however it must be accompanied with the written advice from OBPR setting out the status of the RIS. Independent Reviews used in lieu of a RIS are not subject to an OBPR Final Assessment, but must be provided to the OBPR prior to a final decision. The Independent Review must also be provided to the decision maker for a final decision.

Upon announcement of a final decision, the Standard or Long Form RIS provided to the decision maker will be published on the OBPR website, together with your second pass certification letter and written advice from OBPR setting out the status of the RIS. Independent Reviews are published with the certification letter following announcement of a final decision.

In practice, the OBPR will seek to publish the RIS on its website at the first available opportunity after a final decision is publicly announced (for example, by media release, or tabling of legislation in Parliament).

Short Form RISs are not published. Interim RISs that are not converted to a Standard or Long Form RIS (as appropriate) prior to a final decision will be published following an announcement of the final decision.

The OBPR will make clear on its website if no RIS is prepared, if the RIS is not formally assessed, if your agency does not grant approval for publication, or if a RIS published elsewhere (such as in explanatory memorandums or statements) does not match the RIS assessed by the OBPR.

Where does the RIS need to be published?

RISs (or their equivalent), certification letters and the OBPR’s assessments of those RISs will be published on at least the OBPR website on the announcement of the policy proposal, in consultation with your agency.

Where a regulation is tabled in Parliament, your RIS¹, as assessed by the OBPR, needs to be included in the explanatory memorandum (for primary legislation) or the explanatory statement (for legislative instruments).

¹ Or its equivalent (for example, Independent Review).
RISs for treaties will be tabled along with the final text of the treaty and the national interest analysis.

**Can publication of a RIS be delayed?**

The OBPR will obtain your agency’s approval before publishing the RIS. However, if your agency does not provide the RIS to the OBPR and/or does not provide approval for publication as soon as practicable after a final decision is made, the OBPR will report the agency as non-compliant.²

What constitutes ‘as soon as practicable’ will be determined by the OBPR on a case by case basis, taking into account any mitigating circumstances.

**Is there scope to amend the RIS prior to publication?**

Subject to some limited exceptions, the RIS submitted to the OBPR for Final Assessment will be published under the transparency requirements.

Remember, your RIS is not an advocacy document, but informs a decision maker by providing an objective assessment of the impacts of various options to address an identified problem. Making public the various options, and commensurate impacts, considered by a decision maker is an important aspect of transparency. The published RIS should reflect the analysis that was before the decision maker when they made their decision, and as such should not be amended following a final decision to support or justify the decision taken.

However, some limited scope exists to modify a RIS after the decision maker’s consideration but before publication:

- where the RIS refers to commercial-in-confidence or national security information (the RIS needs to be published in the form provided to the decision-maker – it cannot be changed even where the information may have effects on the market or market stability);
- to correct minor typographical or formatting errors, but without substantially changing the meaning or analysis in the RIS;
- to include additional relevant information that does not substantially alter the analysis in the RIS (for example, additional information about consultation processes or extra details of future reviews of the regulation); or
- to update the regulatory costing information, where the proposal was modified by the decision maker.

Any changes of these types must be approved by the OBPR before publication. A failure to seek OBPR approval of changes prior to publication will lead to an agency being reported on the OBPR website as non-compliant.

**Does the RIS need to be included in the Explanatory Memorandum or Statement?**

By default, where a regulation is tabled in Parliament, the RIS needs to be included in full in the explanatory memorandum or statement. This is regardless of whether the RIS has already been published on the OBPR website.

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² Non-compliance at the transparency stage does not trigger a requirement to complete a post-implementation review.
There may be certain circumstances where publishing the RIS in the explanatory memorandum or statement is impractical, such as where the RIS (or Independent Review):

- has been tabled in Parliament previously, and a stable web link to the document is available; or

- is exceptionally long and would impose an unreasonable cost – in this case a summary of the document (for example, the executive summary) may be published instead in the explanatory memorandum or statement.

You must seek OBPR agreement to the exceptions above prior to seeking Ministerial approval of the Parliamentary Bill.

Failure to publish the RIS in full in the explanatory memorandum or statement without the agreement of the OBPR will lead to an agency being reported on the OBPR website as non-compliant.

**Assistance**

If you have any questions about this guidance note, email OBPR at helpdesk-OBPR@pmc.gov.au or call (02) 6271 6270.

Further information on the RIS process is in the *Australian Government Guide to Regulation*.