



Independent Reviews, RIS-like processes and the Regulation Impact Statement requirements

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

The Guide to Regulatory Impact Analysis 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, or on behalf of, a department, agency, statutory authority, or 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 2020?

Independent Reviews will now be assessed by OBPR for **relevance** to the recommended option(s).

Additional supporting analysis will be required if the recommended option(s) put forward to the decision maker goes beyond the scope of analysis contained in the Independent Review. This additional analysis **will not be assessed** by OBPR, but will be released alongside the Independent Review.

What is a RIS-like process?

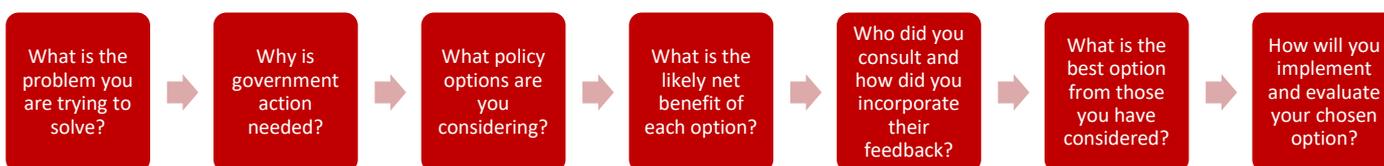
A RIS-like process includes other mechanisms used by agencies to assess a regulatory proposal. The main proviso for a RIS-like process is that it contains analysis of the regulatory proposal that is equivalent to what would otherwise have been required in a RIS. Depending on the quality and extent of 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)
- Productivity Commission reviews
- 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.

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

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:



Requirements

Where an agency chooses to use an Independent Review or RIS-like process in lieu of a RIS, they are 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. In these circumstances, OBPR does not assess the quality of the analysis in the Independent Review or RIS-like process. OBPR is, however, required to assess the Independent Review for relevance to the recommended option(s).

The self-assessment is done by way of a secretary / deputy secretary / chief executive (or delegate) certifying in writing to OBPR that the Review or RIS-like process:

1. has undertaken a process and analysis equivalent to a RIS;
2. examined the same problem the proposal is seeking to address;
3. examines options or recommendations that are relevant to the options or recommendations in the proposal, including justification on where the options or recommendations are not substantially the same;
4. adequately addresses all seven RIS questions in relation to the proposal; and
5. is consistent with the Australian Government Guide to Regulatory Impact Analysis.

OBPR has a template self-assessment certification letter, available upon request, that agencies are encouraged to use.

The certification letter needs to include the Regulatory Burden Estimate table quantifying the regulatory costs to individuals, businesses and/or community organisations, associated with the proposal. See the Regulatory Burden Measurement framework guidance note for more information.

It is good 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 and the certification letter then will be published on the Department of the Prime Minister and Cabinet's website (<https://ris.pmc.gov.au/>), following the announcement of a decision.

Test of relevance

Independent Reviews and RIS-like processes will be assessed by OBPR for relevance to the recommended option(s). In assessing relevance, OBPR applies the following test:

Where an agency certifies an Independent Review or similar mechanism ("the Review") as a process and analysis equivalent to a RIS for the purpose of informing a proposal put to decision makers, a reasonable person would conclude that:

- the policy problem the proposal seeks to address is substantially the same as the policy problem addressed in the Review; and
- the proposal presents options or recommendations that are substantially the same as the options or recommendations in the Review.

Where OBPR assesses the options or recommendations presented in the Independent Review are not relevant to the options or recommendations in the proposal, OBPR will request additional analysis.

An example of where additional analysis may be requested is where the Government is responding to Royal Commission recommendations, but in its response takes the opportunity to make additional changes to the relevant sector that were not the subject of the Royal Commission. If the Royal Commission report is used as an Independent Review, OBPR would request supplementary analysis to support the additional changes being sought.

Where additional analysis is requested, OBPR **will not assess** the quality of that analysis. However, the process will be deemed insufficient if additional analysis is requested but not provided. OBPR will report this publicly following announcement of a final decision on the proposal.

Self-assessment of Independent Reviews and RIS-like processes

When assessing whether a RIS meets good practice, OBPR examines whether the RIS has considered the 6 principles for Australian Government policy makers and adequately addressed the seven RIS questions outlined in the Guide to Regulatory Impact Analysis.

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 6 principles and seven RIS questions. You should pay particular attention to the following:

- Is the policy problem addressed in the Review substantially the same as the policy problem in the proposal?
- Are the options or recommendations in the Review substantially the same as the options or recommendations in the proposal?
- 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?
- Does it show how the impacts of the options would be distributed across the community, including on small business?

- 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?

Submission process

You are encouraged to test the relevance of the Review as early as possible in the policy development process. This could be at the point where you are preparing the Review terms of reference or commencing a RIS-like process, to ensure that each of the seven RIS questions will be addressed.

The formal assessment of relevance will be made at the point when OBPR receives the policy proposal.

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.

Further information and guidance material on the RIS process can be found [here](#).

Frequently asked questions

Will OBPR assess whether the Independent Review or RIS-like process provides 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. 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 RIS-like process have to be published?

Yes. The Independent Review or RIS-like process (along with the certification letter) needs to be published, at a minimum on the Department of the Prime Minister and Cabinet website (<https://ris.pmc.gov.au/>), following the announcement of a decision. This includes the additional analysis where requested by OBPR.

What happens if an Independent Review is certified without additional supporting analysis, where OBPR previously advised it is required?

The Independent Review will be deemed insufficient, and this advice will be published.

What happens if the certified Independent Review is not provided to OBPR prior to a major decision point?

The Independent Review may be assessed as insufficient if it is not provided to OBPR prior to a non-final decision point. If it is not provided prior to a final decision point, it will be deemed insufficient.